INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	3
Statement	3
A. The Bank Secrecy Act and the regulations thereunder	4
B. The decision below	8
The question presented is substantial	9
Conclusion	24
Appendix A	25
Appendix B	69
Appendix C	111
Appendix D	121
Appendix E	127

CITATIONS

Cases:

Ashwander v. *Tennessee Valley Authority*, 297 U.S. 288	12
Bowes v. *Commission to Investigate Allegations of Police*, 330 F. Supp. 262	24
Burdeau v. *McDowell*, 256 U.S. 365	24
Communist Party v. *Subversive Activities Control Board*, 367 U.S. 1	11
Couch v. *United States*, No. 71–889, decided January 4, 1973	17, 21, 24
Donaldson v. *United States*, 400 U.S. 517	21, 22
Electric Bond Co. v. *Securities and Exchange Commission*, 303 U.S. 419	11
Federation of Labor v. *McAdory*, 325 U.S. 450	12

Cases—Continued Page
Haynes v. *United States*, 390 U.S. 85 24
Marchetti v. *United States*, 390 U.S. 39 24
McMann v. *Securities and Exchange Commission*, 87 F. 2d 377 15
N.A.A.C.P. v. *Alabama*, 357 U.S. 449 23
Perlman v. *United States*, 247 U.S. 7 24
Reisman v. *Caplin*, 375 U.S. 440 22
Schneider v. *Smith*, 390 U.S. 17 12
Shapiro v. *United States*, 335 U.S. 1 15
United States v. *Biswell*, 406 U.S. 311 17
United States v. *First National Bank*, 267 U.S. 576 affirming 295 Fed. 142 14
United States v. *Morton Salt Co.*, 338 U.S. 632 .. 14
United States v. *Rumley*, 345 U.S. 41 12
United States v. *Ryan*, 402 U.S. 530 22
Watson v. *Buck*, 313 U.S. 387 11
Constitution and statutes:
Constitution of the United States of America:
First Amendment 23
Fourth Amendment 2, 8, 9, 14, 20, 21, 23
Fifth Amendment 21, 23, 24
Act of October 26, 1970, P.L. 91–508, Title I, 84 Stat. 1114 *et seq* 2, 4, 5, 8, 17, 18
Sec. 101 ..... 4, 69
Sec. 102 ..... 4, 71
Sec. 121 ..... 4, 72
Sec. 122 72
Sec. 123 ..... 4, 73
Sec. 124 74
Sec. 125 74
Sec. 126 75
Sec. 127 75
Sec. 128 75
Sec. 129 75

Constitution and Statutes—Continued
Currency and Foreign Transactions Reporting Act, P.L. 91-508, Title II 84 Stat. 118 *et seq* — Page 2, 5, 8, 18
Sec. 201 — 2, 8, 76
Sec. 202 — 5, 8, 76
Sec. 203 — 8, 76
Sec. 203(*l*) — 5, 13
Sec. 204 — 8, 79
Sec. 205 — 8, 79
Sec. 206 — 8, 80
Sec. 207 — 8, 80
Sec. 208 — 8, 80
Sec. 209 — 8, 80
Sec. 210 — 8, 80
Sec. 211 — 8, 80
Sec. 212 — 8, 80
Sec. 213 — 8, 22, 82
Sec. 221 — 2, 6, 9, 13, 83
Sec. 222 — 2, 6, 9, 83
Sec. 223 — 2, 6, 9, 83
Sec. 231 — 5, 84
Sec. 232 — 86
Sec. 233 — 86
Sec. 234 — 87
Sec. 235 — 87
Sec. 241 — 5, 87
Sec. 242 — 88
Internal Revenue Code of 1954 (26 U.S.C.), Secs. 7602-7608 — 21
Trading with the Enemy Act, c. 106, 40 Stat. 411, Sec. 5 (12 U.S.C. (1940 ed. Supp. V) 95a) — 7, 15, 89
28 U.S.C. 2282 — 8

Miscellaneous:
Amended Treasury Regulations on Currency and Foreign Transactions, 38 Fed. Reg. 2174 (January 22, 1973):
Page
Sec. 103.34 ... 114
Sec. 103.43 ... 118
Sec. 103.45 ... 22, 119
Sec. 103.51 ... 4, 119
17 Fed. Reg., Part 2:
p. 1822 ... 15
p. 2306 ... 15
H. Rep. No. 91–975, 91st Cong., 2d Sess ... 13, 16, 17
H.R. 15073, 91st Cong., 1st Sess., Sec. 203(m) ... 14
Hearings on Foreign Bank Secrecy and Bank Records before the House Committee on Banking and Currency, 91st Cong., 1st and 2d Sess ... 14, 16, 18, 19, 20
Hearings on Foreign Bank Secrecy before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency, 91st Cong., 2d Sess ... 14, 18, 19, 20
S. Rep. No. 91–1139, 91st Cong., 2d Sess ... 16, 17, 20
Treasury Regulations on Financial Record-keeping and Reporting (31 C.F.R.):
Sec. 103 ... 122
Sec. 103.11 ... 7, 10, 13, 92
Sec. 103.21 ... 95
Sec. 103.22 ... 2, 6, 7, 10, 13, 16, 17, 95
Sec. 103.23 ... 5–6, 19, 96
Sec. 103.24 ... 5, 19, 97
Sec. 103.25 ... 98
Sec. 103.26 ... 99
Sec. 103.31 ... 99
Sec. 103.32 ... 100
Sec. 103.33 ... 4, 100

Miscellaneous—Continued
Treasury Regulations—Continued
Page
Sec. 103.34 ..... 4, 100
Sec. 103.35 103
Sec. 103.36 104
Sec. 103.37 105
Sec. 103.41 105
Sec. 103.42 105
Sec. 103.43 106
Sec. 103.44 106
Sec. 103.45 ..... 22, 106
Sec. 103.46 107
Sec. 103.47 108
Sec. 103.48 108
Sec. 103.49 108
Sec. 103.50 109
Treasury Regulations on Instructions Relating to Reports of Currency Transactions, 31 C.F.R. (1949 ed.), Part 102 (10 Fed. Reg., Part 6, p. 6556) 7, 16
Treasury Release No. A–590, Aug. 3, 1959 .. 16, 127

In the Supreme Court of the United States

OCTOBER TERM, 1972

No.

GEORGE P. SHULTZ, SECRETARY OF THE TREASURY, AND ALL OTHER DEFENDANTS IN THE DISTRICT COURT, APPELLANTS

v.

THE CALIFORNIA BANKERS ASSOCIATION, FORTNEY H. STARK, JR., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The memorandum opinion of the district court (App., *infra*, pp. 43–61) is reported at 347 F. Supp. 1242.

JURISDICTION

This case consists of two actions, consolidated below, seeking to enjoin as unconstitutional the implementation of various provisions of Titles I and II of the Act of October 26, 1970, P.L. 91–508, 84 Stat. 1114 (hereafter the Bank Secrecy Act), and the Treasury Regu-

lations issued thereunder (31 C.F.R., Part 103). A three-judge district court, convened pursuant to 28 U.S.C. 2282, granted a preliminary injunction on October 18, 1972, restraining enforcement of a portion of Title II of the Act and the accompanying Regulations (App., *infra*, pp. 62–64). Notices of appeal were filed by the federal defendants on November 13, 1972 (App., *infra*, pp. 65–68).[1] This Court's jurisdiction is invoked under 28 U.S.C. 1252 and 1253.

QUESTION PRESENTED

Whether Sections 221–223 of the Bank Secrecy Act,[2] as implemented by Regulations,[3] which require financial institutions to file reports with the Secretary of the Treasury concerning each currency transaction involving more than $10,000, except routine transactions by established customers, violate the Fourth Amendment or other constitutional provisions.

---

[1] The federal defendants had also filed notices of appeal on October 6, 1972, from the district court's memorandum opinion filed September 11, 1972 (App., *infra*, pp. 43–61), before the court had issued its order granting a preliminary injunction.

[2] Title I has no official name, but the entire Act is popularly known as the Bank Secrecy Act, due to the widespread concern with secrecy of bank accounts in the legislative proceedings accompanying its enactment. Title II of the Act of October 26, 1970, P.L. 91–508, 84 Stat. 1114, 1118, is officially entitled the Currency and Foreign Transactions Reporting Act (Section 201).

[3] 31 C.F.R. 103.22. See Treasury Regulations on Financial Recordkeeping and Reporting of Currency and Foreign Transactions, 31 C.F.R., Part 103 (37 Fed. Reg. (Part 4) 6912 (April 5, 1972)).

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Bank Secrecy Act (Sections 101, 102, 121–129, 201–213, 221–223, 231–235, 241 and 242), the Regulations thereunder (31 C.F.R. 103.11, 103.21–103.26, 103–31–103.37, and 103.41–103.50), and the Trading with the Enemy Act (Section 5) are set forth in Appendix B, *infra*, pp. 69–110.

STATEMENT

This case involves suits against the Secretary of the Treasury and other federal officials to enjoin implementation of the financial recordkeeping and reporting provisions of the Bank Secrecy Act. The complainants are the California Bankers Association, an association of 158 state and national banks doing business in California; Fortney H. Stark, Jr., a bank president and customer; Security National Bank, an insured national bank; Charles C. Marson, a bank customer; the American Civil Liberties Union of Northern California, a nonprofit membership corporation that desires to keep the identities of its members and contributors in strict confidence; Fred Lieberman, an individual who expects to export monetary instruments exceeding $5,000 to places outside the United States; Edward C. Harwood, Carl Bruer, and Edward Durell, who maintain financial interests in and signature authority over one or more bank accounts in foreign countries; and sixteen unidentified additional plaintiffs (App., *infra*, pp. 25–42).

A. THE BANK SECRECY ACT AND THE REGULATIONS THEREUNDER

The declared purpose of Title I ("Financial Recordkeeping") of the Bank Secrecy Act of 1970[4] is to "require the maintenance of appropriate types of records * * * where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings" (Sections 101, 121). Section 101 requires each bank insured under the Federal Deposit Insurance Act to maintain records and other evidence of the identities of its customers, and to make microfilm copies of checks and similar instruments that are drawn on it and presented to it for payment, and records of such items received by it for deposit or collection. Section 123 requires similar records to be made and maintained by uninsured financial institutions, such as those in the business of redeeming checks, money orders, travelers' checks, or similar instruments.

The Act gives the Secretary of the Treasury authority to prescribe regulations to carry out the purposes of Title I (Sections 101, 102, 123). The Regulations promulgated by the Secretary under Title I set forth the types of records to be microfilmed by all financial institutions and the types of records to be microfilmed by banks (31 C.F.R. 103.33, 103.34). There is no provision in Title I or elsewhere giving the government additional authority to inspect these records, and the Amended Regulations[5] expressly provide that such

[4] Sections 101 to 129 of the Act (App., *infra*, pp. 69–75).

[5] Section 103.51, 38 Fed. Reg. 2174 (Jan. 22, 1973) (App., *infra*, p. 119).

inspection is governed by other federal law. The court below upheld the constitutionality of Title I (App., *infra*, p. 45).

Title II of the Bank Secrecy Act, Sections 201–242 (App., *infra*, pp. 76–89), deals with the reporting of currency and foreign transactions and has the same declared purpose as Title I (Section 202). Section 241 gives the Secretary of the Treasury authority to require United States citizens, residents and businessmen who have bank accounts or other relationships with foreign financial agencies to maintain records and file reports regarding these relationships. Under the Regulations, such persons must report information concerning their accounts with foreign financial agencies on their tax returns and an accompanying form (31 C.F.R. 103.24). Section 231 of the Act requires the reporting of each transportation into or out of the United States of monetary instruments exceeding $5,000 in value on any one occasion.[6] The Regulations, however, exempt from the Section 231 reporting requirement each "transfer of funds through normal banking procedures which does not involve the physical transportation of currency or

[6] Section 231 also requires a report where a person "receives monetary instruments at the termination of their transportation to the United States from or through any place outside the United States." Section 203(*l*) defines the term "monetary instruments" to include "coin and currency of the United States, and in addition, such foreign coin and currencies, and any such types of travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, and stock with title passing upon delivery, or the equivalent thereof, as the Secretary may by regulation specify for the purposes of the provision of this title to which the regulation relates."

monetary instruments * * * " (31 C.F.R. 103.23(a)). The district court held these provisions with respect to reporting of foreign bank accounts and imports and exports of monetary instruments constitutional (App., *infra*, pp. 45–47).

The provisions of the Act held unconstitutional below and at issue here are Sections 221 and 222. Section 221 gives the Secretary authority to require reports of—

> Transactions involving any domestic financial institution * * * if they involve the payment, receipt, or transfer of United States currency, or such other monetary instruments as the Secretary may specify, in such amounts, denominations, or both, or under such circumstances, as the Secretary shall by regulation prescribe.

Section 222 provides that the Secretary may require such reports from the domestic financial institution involved or the parties to the transaction, or both.[7] Under the Regulations, however, only financial institutions must file reports, and they must do so only where the transaction involves the deposit, withdrawal, exchange or other payment of *currency*[8] in excess of $10,000. 31 C.F.R. 103.22(a).

---

[7] The court also held unconstitutional Section 223, which provides that the Secretary may designate financial institutions to receive such reports. This authority has never been implemented.

[8] The term "currency" is defined in the Regulations as "The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. It includes U.S. silver certificates, U.S. notes and Federal Reserve notes, but does not include bank checks or other negotiable instruments not customarily accepted as money." The term "transaction in cur-

Form 4789 (App., *infra*, p. 121),[9] which is to be used for such reports, requires the following information with respect to reportable transactions: (1) the identity of the person who conducted the transaction; (2) the person or organization for whom the transaction was completed; (3) a description of the type of currency transaction, the amount involved, the amount in denominations of $100 or more, the date of the transaction, the type of non-United States currency involved, if any, and a description of any check involved in the transaction; (4) the type of identification presented; and (5) the identity of the financial institution filing the report. The Regulations exempt several types of currency transactions from the reporting requirement, the most important of which are transactions "with an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned," 31 C.F.R. 103.22(b).[10]

---

rency" is defined as "A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part." 31 C.F.R. 103.11.

[9] Form 4789 is similar to Form TCR–1 (App., *infra*, p. 130), which was required to be filed for similar domestic currency transactions under 31 C.F.R., Part 102 (issued under the authority of Section 5(b) of the Trading with the Enemy Act (App., *infra*, pp. 89–91)). Part 102 was repealed effective July 1, 1972.

[10] Also exempted are transactions with Federal Reserve Banks and Federal Home Loan Banks and transactions solely with, or originated by, financial institutions or foreign banks.

Sections 201–213 of the Act contain administrative and enforcement provisions applicable to Title II generally. Section 204 gives the Secretary of the Treasury authority to prescribe regulations, while Section 206 allows him to make exemptions from the Title's provisions. Sections 207–210 provide for injunctive relief and civil and criminal penalties for violations of the Title. Section 212 gives the Secretary authority to prescribe regulations for making information received "available for a purpose consistent with the provisions of this title to any other department or agency of the Federal Government on the request of the head of such department or agency."

B. THE DECISION BELOW

On June 7 and 22, 1972, a few days before the Regulations were scheduled to go into effect on July 1, 1972, appellees brought these suits alleging that the Act violated the Fourth Amendment and other constitutional provisions. A temporary restraining order proscribing enforcement of the Act and the implementing Regulations was issued on June 29, 1972, and a three-judge district court was convened pursuant to 28 U.S.C. 2282 to hear and decide the constitutional issues raised by the complaints.

The district court unanimously upheld the constitutionality of the recordkeeping requirements of Title I and the accompanying Regulations, and the requirements of Title II and the Regulations respecting reports concerning the import and export of currency and monetary instruments and relationships with foreign financial institutions (App., *infra*, pp. 45–47). Al-

though thus upholding the provisions dealing with foreign financial transactions, the court concluded, with one judge dissenting (App., *infra*, p. 61), that the domestic currency transaction reporting requirements of Sections 221–223 are invalid under the Fourth Amendment as an overly broad intrusion into personal financial privacy (App., *infra*, pp. 47–60). In the majority's view, these provisions could authorize—although the Regulations do not do so—the Secretary to require detailed reports of virtually all domestic financial transactions, including those involving personal checks and drafts (App., *infra*, p. 48). The court therefore enjoined enforcement of these provisions by implementation of the Regulations issued thereunder or otherwise without reaching the question whether the currency reporting Regulations would themselves violate the Fourth Amendment and without considering the validity of these Sections under other constitutional provisions (App., *infra*, p. 60).

THE QUESTION PRESENTED IS SUBSTANTIAL

The decision below creates a serious gap in the Bank Secrecy Act that significantly impairs the statutory scheme for discovering transactions with financial institutions involving violations of criminal, tax or regulatory laws. Although the court's injunction is preliminary in form, there are no disputed facts to be resolved, essentially only issues of law are involved, and there is no reason to believe the district court will not simply adhere to the opinion below for the purposes of a final decree. This injunction is, moreover, not limited to any particular area of the country; it

is nationwide in scope and effect. Unless plenary review is granted by this Court, significant provisions of a major Act of Congress will have been nullified—and, we submit, nullified erroneously, for the district court erred not only in its conclusion that certain reporting provisions of the Act are unconstitutional, but also in its basic approach in passing upon the constitutional validity of this legislation.

1. In considering the provisions of the Act concerning domestic financial transactions, the district court entirely disregarded the implementing Regulations promulgated by the Secretary of the Treasury, which set forth the reporting and recordkeeping requirements under these statutory provisions. Although the Regulations require only financial institutions to report transactions (31 C.F.R. 103.22(a)), the court below analyzed the statutes involved as if reporting were required "by other parties to or participants in transactions with the institutions" (App., *infra*, p. 48). Although under the Regulations the transactions that financial institutions must report are only those involving "currency," as distinguished from checks and drafts or other written orders (31 C.F.R. 103.11), the court analyzed these statutory provisions as if reporting were required "not only of currency transactions but of any transaction involving any monetary instrument" (App., *infra*, p. 48). And although the Regulations direct financial institutions to report only currency transactions involving more than $10,000 (31 C.F.R. 103.22),, the court below considered the statutory provisions as if there were a requirement to report all transactions "in any amount—large or small" (App., *infra*, pp. 47–48). As a

result, instead of adjudging the constitutionality of a statutory scheme, as implemented by regulations, that requires only financial institutions to report only currency transactions involving more than $10,000, the district court considered the constitutionality of requiring financial institutions and all parties and participants in domestic transactions with these institutions to make reports of all such transactions, regardless of the monetary instrument or amount of money involved (App., *infra*, pp. 48–49).

The district court's decision to judge the Act's reporting requirements for domestic financial transactions as they might hypothetically be administered, rather than as the Regulations actually implement them, disregards the long-settled principle that in passing upon the constitutionality of legislation the courts should not decide "hypothetical controversies which may never become real." *Electric Bond Co.* v. *Securities and Exchange Commission*, 303 U.S. 419, 443. As this Court has often pointed out, "[p]assing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case." *Watson* v. *Buck*, 313 U.S. 387, 402; see also *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 71–72, and cases there cited. Yet that is essentially what the court below did here.

We question whether a broad attack on an entire statute, in advance of its going into operation, and without any specific or concrete facts, is anything more than an effort to get an advisory opinion on questions

of sweeping generality. Long experience shows that questions look different when they arise on their own facts, and are presented by a party who can claim that he is really hurt. Given the manner in which the court below decided this case, it is at least doubtful whether this case now comes appropriately under the Declaratory Judgment Act as "a case of actual controversy," if it ever did. See *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 324–326; *Electric Bond Co.* v. *Securities and Exchange Commission*, *supra*, 303 U.S. at 443; *Federation of Labor* v. *McAdory*, 325 U.S. 450, 461–462.

2. In addition, the district court's approach in this case contravenes the rule, reiterated many times by this Court, that the words of a statute are to be read narrowly so as to avoid substantial constitutional doubts that might otherwise be presented. *E.g.*, *United States* v. *Rumley*, 345 U.S. 41, 45–46; *Schneider* v. *Smith*, 390 U.S. 17, 26–27. The court below did just the opposite: it read the language of the Act as broadly as possible, ignored the implementing Regulations, and, in the process, conjured up a host of constitutional issues that are not presented by the Act as it is presently administered—and in all probability never will be.

There is virtually no chance that the currency reporting provisions of the Act would be applied in the broad manner suggested by the court below, for such an interpretation would directly conflict with clear legislative history and would therefore be subject to challenge on non-constitutional grounds. This legislative history indicates that the currency reporting provisions were not intended to encompass all personal checks and similar instruments.

Section 221 provides for reports of transactions involving "monetary instruments," which are defined by Section 203(*l*) as—

> coin and currency of the United States, and in addition, such foreign coin and currencies, and such types of travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, and stock with title passing upon delivery, or the equivalent thereof, as the Secretary may by regulation specify for the purposes of the provision of this title to which the regulation relates.

(The Regulations limit the application of the reporting requirements of Section 221 to "currency." 31 C.F.R. 103.22.)[11] But the term "monetary instruments" in Section 221 does not, and was not intended to, include personal checks. The bill as originally introduced in the House applied only to United States currency. However, in order to close a potential loophole—avoidance of the currency reporting provisions by the use of currency equivalents—the scope of the provisions was expanded to include "monetary instruments." The House Committee noted that this term "theoretically * * * [reached] as far as personal checks," but made clear that "It is not the intention of your committee * * * that this broadened authority be expanded any further than necessary to cover those types of bearer instruments which may substitute for currency." [12] H. Rep. No. 91-975, 91st Cong.,

---

[11] Section 103.11 of the Regulations does not apply to Section 103.22.

[12] Significantly, the House Committee's version of the bill was itself far broader in this respect than the more specific provisions of the statute as enacted, since it would have included within the term "monetary instruments", "such types of

2d Sess., 22; accord, *Hearings on Foreign Bank Secrecy before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency,* 91st Cong., 2d Sess., 183 [hereafter Senate Hearings].

Thus the statute is not simply susceptible to a far narrower construction than that given it by the court below; such a construction is compelled by the legislative history. Yet in this case the district court held that these provisions of the Act infringed the right of privacy of individuals in violation of the Fourth Amendment because it is reasonable "for the drawer of a check to regard himself as the real owner of his checks * * * and to expect that detailed information shown only on the face of his checks will not be automatically broadcast through the vast government bureaucracy without at least some notice, summons, subpoena or warrant in connection with some legitimate pending inquiry" (App., *infra,* p. 54). The court thus decided this case on the basis of hypothetical applications not presented in light of the Regulations and not even possible in the future in view of the legislative history of the Act that we have related.

3. In regard to appellees' Fourth Amendment claims, it must be remembered that, as presently administered, the Act requires reports only from financial institutions. Like other businesses, such institutions "can claim no equality with individuals in the enjoyment of a right to privacy." *United States* v. *Morton Salt Co.,* 338 U.S. 632, 652; see *United States*

---

checks, bills, notes, bonds, stock transferable by delivery *or other obligations or instruments as the Secretary may by regulation specify.*" H.R. (as reported to the House) 15073, 91st Cong., 1st Sess., Sec. 203(m) (emphasis added).

v. *First National Bank,* 267 U.S. 576, affirming 295 Fed. 142 (S.D. Ala.). And as Judge Learned Hand held for the court in *McMann* v. *Securities and Exchange Commission,* 87 F. 2d 377, 379 (C.A. 2), the Fourth Amendment does not forbid the government from requiring information on individual accounts from financial institutions—here the currency reports—unless the demand "is out of proportion to the end sought." Accord *Shapiro* v. *United States,* 335 U.S. 1, 32–33.

To the court below, the relationship between the reporting requirement and the need for effective law enforcement was "far-fetched" (App., *infra,* p. 58).[13] But with respect to large currency transactions—the only kind that must be reported under the Regulations—the court is mistaken. And the court is similarly mistaken in its conclusion that bank customers have a reasonable expectation that their bank will not disclose their large currency transactions.

In 1945, the Secretary of the Treasury promulgated regulations under Section 5(b) of the Trading with the Enemy Act (App., *infra,* p. 89) requiring financial institutions to report all currency transactions that, in the judgment of the institution, exceeded those "commensurate with the legitimate and customary conduct of the business, industry or profession of the person or organization concerned" (Sec. 102.1), particularly where the transaction involved $1,000 or more in denominations of $50 or more,[14] or $10,000 or

[13] The court may have intended this to apply to a requirement that all transactions, large or small, in currency or not, must be reported by financial institutions and their customers—which is not the situation here.

[14] This was raised in 1952 to $2500 in denominations of $100 or more. 17 Fed. Reg. (Part 2) 1822 (Feb. 29, 1952); 17 Fed. Reg. (Part 2) 2306 (March 18, 1952).

more in any denominations.[15] 31 C.F.R. (1949 ed.), Part 102 (10 Fed. Reg., Part 6, p. 6556 (June 5, 1945). When these regulations were revised in 1959, the Secretary noted the great value of these reports in disclosing income tax evasion by racketeers, narcotics dealers, foreign agents, and others engaged in illegal activities. In the fiscal years 1957 and 1958, for example, the Internal Revenue Service completed 129 fraud cases, involving additional tax and penalties of approximately $13,500,000, that originated from information contained in the TCR–1 currency reports. Treasury Release No. A–590, note 15, *supra.*

By 1970, the use of financial institutions, both domestic and foreign, in furtherance of criminal activities had markedly increased. H. Rep. No. 91–975, 91st Cong., 2d Sess., 10; S. Rep. No. 91–1139, 91st Cong., 2d Sess., 2–3. Congress recognized the importance of reports of large and unusual currency transactions in discovering criminal activity and desired to strengthen the statutory basis for requiring such reports. H. Rep. No. 91–975, *supra,* 11–12. In particular, Congress intended to authorize more definite standards for determining what should constitute the type of unusual transaction that must be reported. S. Rep. No. 91–1139, *supra,* 6; see *Hearings on Foreign Bank Secrecy and Bank Records before the House Committee on Banking and Currency,* 91st Cong., 1st and 2d Sess., 61 [hereafter House Hearings].

The Regulations promulgated under the Bank Secrecy Act eliminated the subjectivity of the earlier regulations by replacing the uncustomary conduct

[15] In 1959 the reporting form was simplified. Treas. Release No. A–590, August 3, 1959 (App., *infra,* p. 127).

standard with a requirement (31 C.F.R. 103.22) that each currency transaction exceeding $10,000 must be reported unless it is "with an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate" with the customer's business.[16]

In view of the reporting requirements dating back to 1945, bank customers cannot claim that they had expected their large currency transactions to remain secret; banks have been reporting such transactions for more than twenty-five years. Cf. *Couch* v. *United States,* No. 71–889, decided January 9, 1973, slip op. 13–14; *United States* v. *Biswell,* 406 U.S. 311, 316. And in light of this history there is no basis for the district court's belief that the reporting provisions in the Act have only a tenuous relationship to the discovery of criminal activity.

These currency transaction reporting provisions are necessary to carry out the central objective of the Bank Secrecy Act: to disclose transactions entered into for the purpose of concealing illegal sources of funds or preventing detection of their use in unlawful enterprises. To this end, Title I of the Act is aimed at requiring banks to maintain records sufficient to provide the evidence necessary for criminal, tax and regulatory investigations and proceedings, and adequate to make certain that the identity of bank customers is accurately established. H. Rep. No. 91–975, *supra,* 11; S. Rep. No. 91–1139, *supra,* at 5. However,

[16] In addition, the Regulations provide (31 C.F.R. 103.22) that the names of all customers whose currency transactions in excess of $10,000 are not reported on Form 4789 must be reported to the Treasury on demand.

the effectiveness of this provision, which the court upheld, see pp. 5, 8 *supra,* depends on whether those engaging in illegal activities use written instruments such as checks and on whether the investigatory agencies know of the financial institutions with which they deal. Reports pursuant to Title II of the Act by financial institutions of large currency transactions by non-established customers prevent underworld figures from evading the effect of the record-keeping provisions in Title I and supply leads for determining which records should be summoned or subpoenaed.

The provisions of Title II dealing with foreign financial transactions, which the court below also sustained, see pp. 6, 8 *supra,* are similarly aimed at preventing concealment of financial dealings that could be used for illegal purposes. The prime importance of secret foreign bank accounts is not simply as a depository for concealing funds, but also as a device for converting illegally acquired cash into nonsuspicious, nontraceable credit that can be imported and used in this country.[17] In order to prevent concealment of such conversions, the Regulations require that any person transporting currency in excess of $5,000 into

[17] Foreign accounts as repositories of funds are, in themselves, of little benefit to those who use them. Typically, they do not even pay interest. Rather, the objective is ordinarily to repatriate such funds to the United States in the form of "laundered or "purified" credit, one such method being to "borrow" back funds from a foreign bank on the security of funds secretly deposited therein. *See House Hearings, supra,* 17, 38, 49; *Senate Hearings, supra,* 65.

Congress was appraised of numerous and diverse purposes for which such secret foreign bank accounts have been widely used, including (1) illegal trading in gold, (2) avoiding the Securities and Exchange Commission margin requirements on the purchase of United States securities, (3) manipulating United

or out of the country on any one occasion must report the basic facts of the transaction (31 C.F.R. 103.23); a customer of a foreign financial institution must provide the Secretary with certain details of his relationship with the institution (31 C.F.R. 103.24).

The effectiveness of these latter provisions will be substantially impaired, however, if there can be secret cash deposits into, or withdrawals from, domestic financial institutions with which the customer does not ordinarily deal. Although the covert physical transportation of currency out of or into the United States constitutes a key element in effecting the conversion of cash into usable credit, there was considerable testimony before the congressional committees that domestic financial institutions are often unwittingly involved in transfers and transactions designed to accomplish one step or another in more sophisticated and complex conversion procedures. See, *e.g., House Hearings,* 25–26, 66–67, 68, 90–91; *Senate Hearings,* 280–281. To the extent that large currency transactions, which often mark the beginning or end of these conversion procedures, are not reported and remain secret, the schemes obviously become harder to detect.

States securities markets, (4) circumventing S.E.C. restrictions on insider trading, (5) concealing (and "purifying") the fruits of illegal activity, such as smuggling and marketing dangerous drugs, (6) receiving bribes or illegal kickbacks on government contracts, (7) evading United States taxes by concealing income (such as "skim" from otherwise legal gambling operations) or the realization of income (*e.g.*, on the sale of securities held through a foreign bank), and (8) payment of foreign agents engaged in espionage activities within the United States or dealing with United States personnel. See House Hearings, *supra*, pp. 10–14, 18–28, 49–50, 64–68, 91, 119–123, 128–131; Senate Hearings, *supra*, pp. 65, 66, 68, 71–72, 86–90.

In short, the decision below creates a serious loophole in the statutory scheme and does so on the basis of the court's view, contrary to the historical background of this legislation and at odds with congressional findings, that there is little relationship between the currency reporting requirements and the detection of illegal activity—a view that the court arrived at by disregarding the fact that the implementing Regulations apply only to the kinds of transactions that were at the core of congressional concern when the Act was passed.

4. Since the court below improperly ignored the Regulations, as we have discussed above, pp. 10–14, *supra*, much—if not all—of the portion of its opinion regarding the effect of the reporting provisions on the privacy of individuals deals with issues that are not presented. For example, the intrusion on privacy that would result from requiring banks and individuals to report all banking transactions involving personal checks appears to be the primary reason that the district court held that these provisions violate the Fourth Amendment (App., *infra*, pp. 53–54), yet there presently is no such reporting requirement under the Act and, as we pointed out above, pp. 11–14, *supra*, never could be.[18]

[18] The testimony of the government officials concerning possibly overly broad check microfilming requirements (*House Hearings*, 68; *Senate Hearings*, 178), which the district court quoted (App., *infra*, pp. 58–59), was addressed to improving the recordkeeping statutes, not the currency reporting provisions that the court held unconstitutional. The statute as finally enacted corrected the problems referred to by the Treasury officials by giving the Secretary discretionary authority to limit the scope of the recordkeeping requirements. See S. Rep No. 91–1139, *supra*, 18–19 (supplemental views).

As presently administered, all that the Act requires in this regard is that financial institutions report large currency transactions. Similar requirements have been in existence for more than twenty-five years. The intrusion on privacy is limited to transactions that hold the greatest potential for criminal activity and, in light of the long history of the reporting of large currency transactions, individual bank customers can scarcely contend that they expected that financial institutions would not disclose such transactions. Indeed, the district court itself observed "that communications between banks and their customers are not privileged communications in the technical sense of that term; that bank customers have no rights in bank records; that such records may be subpoenaed from the bank, even over the objection of the depositor, notwithstanding the fact that the records concern the customer's account; that customers have no standing to object to subpoenas requiring their bank to produce records of the customer's accounts and that the production by the bank of its records under subpoena is not, as to the customer, either a Fourth Amendment illegal search and seizure nor a Fifth Amendment self-incrimination" (App., *infra*, pp. 52–53). See *Donaldson* v. *United States*, 400 U.S. 517, 522; *Couch* v. *United States*, No. 71–889, Oct. Term 1972, decided January 9, 1973.

After stating this, however, the court pointed to the lack of "procedural safeguards with respect to reporting of domestic transactions," such as those contained in the laws governing a tax summons in Sections 7602–7608 of the Internal Revenue Code (App., *infra*,

pp. 55–56). For a customer of a financial institution, however, the intervention procedures in tax summons cases described in *Donaldson* v. *United States,* 400 U.S. 517, would be virtually meaningless: his very act challenging the transmission of the currency report would disclose the sketchy information that the report requires. Moreover, since the reports are applicable to such a narrow class of transactions, it is difficult to see how a customer could ever make out a case for intervention under the *Donaldson* requirements, 400 U.S. at 530–531. As to the financial institutions, they could obtain judicial review of the reporting provisions by refusing to transmit the reports and then challenging the demand therefor in an enforcement proceeding, cf. *Reisman* v. *Caplin,* 375 U.S. 440, 446–449; *United States* v. *Ryan,* 402 U.S. 530, 532–534, although it is difficult to see what objection they would have to the present currency reporting requirements. In addition, under Section 213 of the Bank Secrecy Act (App., *infra,* p. 82) any change in the Regulations is subject to the procedural and judicial review provisions of the Administrative Procedure Act.[19]

---

[19] Plaintiffs below, and apparently the district court (App., *infra,* p. 49), expressed concern regarding 31 C.F.R. 103.45, which allows the Secretary "by written order or authorization [to] make exceptions to, grant exemptions from, *impose additional record keeping or reporting requirements authorized by statute, or otherwise [to] modify*" the Regulations without formal amendments. Section 103.45 has now been amended, however, eliminating the italicized phrase in order to make clear that no additional requirements may be imposed except by formal amendment of the Regulations. See App., *infra,* p. 119.

In short, neither financial institutions nor their customers engaging in large currency transactions have a valid claim that the reporting of such transactions violates the Fourth Amendment's prohibition against unreasonable searches and seizures or any right to privacy emanating therefrom. The district court erred in holding otherwise—an error that stemmed in substantial part from its refusal to consider the Act in light of the Regulations and its insistence on interpreting each of the reporting provisions as broadly as the language could bear.

5. Plaintiffs raised other constitutional claims not reached by the district court. Relying on cases such as *N.A.A.C.P.* v. *Alabama,* 357 U.S. 449, they contended that the currency reporting provisions violate their right to freedom of association under the First Amendment. But their argument assumes that the Secretary will require reports of all checks and similar items used by membership organizations, and that such information might be used to suppress certain organizations. Plaintiffs did not claim, however, that membership organizations engage in the large currency transactions that must actually be reported under the Regulations and for that reason alone their contention should be rejected. It is, moreover, unlikely that they would engage in such transactions and still more improbable that reports of such activity could or would be used to impinge upon the First Amendment rights of their members.

Plaintiffs' further contention that these statutes deprive bank customers of their privilege against self-incrimination under the Fifth Amendment is

unfounded. Cases such as *Marchetti* v. *United States*, 390 U.S. 39, which struck down the registration requirement of the gambling tax statutes, are not in point here, since the Regulations require only the financial institution, not the person who engages in the large currency transaction, to file the report. See *Perlman* v. *United States*, 247 U.S. 7, 15; *Burdeau* v. *McDowell*, 256 U.S. 465; cf. *Couch* v. *United States*, No. 71–889, Oct. Term, 1972, decided January 9, 1973. Even if the reports were required of the customers of financial institutions, which is not the case, they could properly assert their Fifth Amendment claim only in an action to compel them to make a report, not in a declaratory judgment action such as this. *Haynes* v. *United States*, 390 U.S. 85, 99; *Bowes* v. *Commission to Investigate Allegations of Police*, 330 F. Supp. 262 (S.D. N.Y.).

CONCLUSION

For the reasons stated, probable jurisdiction should be noted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

SCOTT P. CRAMPTON,
Assistant Attorney General.

A. RAYMOND RANDOLPH, JR.,
Assistant to the Solicitor General.

LEONARD J. HENZKE, JR.,
GARY R. ALLEN,
Attorneys.

FEBRUARY 1973.

APPENDIX A

United States District Court for the Northern District of California

NO. —

THE CALIFORNIA BANKERS ASSOCIATION, PLAINTIFF

v.

JOHN B. CONNALLY, JR., SECRETARY OF THE TREASURY OF THE UNITED STATES; GEORGE P. SHULTZ, SECRETARY-DESIGNATE OF THE TREASURY; WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY; MYLES J. AMBROSE, COMMISSIONER OF CUSTOMS; JOHNNIE M. WALTERS, COMMISSIONER OF THE INTERNAL REVENUE SERVICE; HERMAN NICKERSON, JR., ADMINISTRATOR OF THE NATIONAL CREDIT UNION; THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM; THE FEDERAL HOME LOAN BANK BOARD; THE FEDERAL DEPOSIT INSURANCE CORPORATION; AND THE SECURITIES AND EXCHANGE COMMISSION, DEFENDANTS

PHILIP E. DIAMOND,
JOHN M. ANDERSON,
EDGAR B. WASHBURN,
LANDELS, RIPLEY & DIAMOND,
San Francisco, California 94104
Attorneys for Plaintiff,
The California Bankers Association.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

JURISDICTION AND VENUE

1. This is an action for injunctive and declaratory relief to prevent enforcement of an Act of Congress

and regulations promulgated pursuant to that Act. This Court has jurisdiction under 5 U.S.C. 500 et. seq.; 5 U.S.C. 701–706; and 28 U.S.C. 1331, 1332, 1346, 1348, 1349, 1361, 2201, and 2282. The amount in controversy exceeds, exclusive of interest and costs, the sum of $10,000.

2. Each of the defendants has performed or threatens to perform the acts alleged in this complaint within the Northern District of California, and the plaintiff's claim arises in this District. Pursuant to 28 U.S.C. 1391, venue is proper in this District.

PARTIES

3. The plaintiff, California Bankers Association, is an unincorporated association consisting of 158 state and national banks doing business in the State of California. The member banks of the plaintiff are referred to as "the members." Each member maintains many thousands of accounts and is involved in numerous transactions daily which fall within the provisions of the Act of Congress and regulations under attack herein. If such Act and regulations are permitted to become effective, compliance by the members will cost them many thousands of dollars per year and inflict upon them the irreparable injury hereafter described. Alternatively, failure of members to comply with the Act and regulations will subject them to substantial civil and criminal penalties.

4. Defendant John B. Connally, Jr., is the Secretary of the Treasury of the United States, and is referred to in this complaint as "the Secretary." Defendant Charles Shultz has been nominated Secretary of the Treasury, subject to confirmation by the United States Senate. Defendants Connally and Shultz are charged with the duty and responsibility of enforcing the Act and regulations which are the subject of this complaint.

5. Defendant William B. Camp is Comptroller of the Currency; defendant Myles J. Ambrose is Commissioner of Customs; defendant Johnnie M. Walters is Commissioner of the Internal Revenue Service; defendant Herman Nickerson, Jr., is Administrator of the National Credit Union. Defendants Camp, Ambrose, Walters, Nickerson, and the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission are charged under the Act and regulations with the duty and responsibility of enforcing the Act and regulations in question.

CLAIM FOR RELIEF

6. In 1970 the Congress of the United States enacted and the President of the United States signed into law Public Law 91–508, 84 Stat. 114 *et seq.*, 31 U.S.C. § 1051 *et seq.*, referred to in this complaint as "the Act."

7. In April, 1971, purportedly pursuant to the authority granted to him by the Act, the Secretary of the Treasury promulgated certain regulations adding Part 103 to the Code of Federal Regulations, referred to hereinafter as "the regulations." These regulations are, unless otherwise enjoined, to become effective July 1, 1972.

8. The Act and regulations require that the plaintiff's members affirmatively and promptly report to the Secretary, in addition to other transactions, the following:

(a) The transportation by plaintiff's members of monetary instruments having a value of more than $5,000.00 into or out of the United States;

(b) Each deposit, withdrawal, or exchange of currency or other payment by, through, or to one

of plaintiff's members which involves a transaction in currency of more than $10,000; except that the members are not required to report transactions with an established customer which it reasonably concludes does not exceed in its currency transactions amounts commensurate with the customary business practice of the customer, unless otherwise directed in writing by the Secretary of the Treasury.

9. The Act and regulations further require that the members retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) The front and back of all checks and money orders drawn on it; except checks on accounts which can be expected to have drawn on them an average of at least 100 checks per month per calendar year or per occasion for the issuance of checks and which meet certain other specific criteria are exempt;

(b) Records of each transaction involving a checking or savings account;

(c) Records of each extension of credit of more than $5,000 not secured by real property;

(d) Records sufficient to reconstruct a demand deposit account and to trace a check deposited in such account through its domestic processing system or to supply a description of a deposited check.

10. The reporting and record keeping requirements under the Act and regulations may be modified or expanded at the will of the Secretary under C.F.R. 103.45(a), which provides, in part, as follows:

> The Secretary, in his sole discretion, may by written order or authorization make exceptions to, grant exemptions from, impose additional record keeping or reporting requirements authorized by statute, or otherwise

modify the requirements of this part. Such exceptions, exemptions, requirements or modifications may be conditional or unconditional, may apply to particular persons or to classes or persons, and may apply to particular transactions or classes of transactions.

The aforesaid discretionary power to modify or expand the requirements threatens to deprive members of their constitutional right of due process and equal protection under the Fifth Amendment of the United States Constitution and is a void delegation of legislative power and/or an excessive exercise of legislative power previously delegated in contravention of Article I of the United States Constitution. The foregoing regulation likewise purports to authorize the Secretary to modify or expand the regulations without complying with the procedure specified by the Administrative Procedure Act (5 U.S.C. 500 *et. seq.*).

11. Each member maintains a close business relationship with its depositors and customers which is founded upon the member maintaining the confidential nature of its depositors' and customers' business transactions. Compliance with the provisions of the Act and regulations described herein will prevent members from maintaining such confidence thereby destroying the business relationship that exists. The destruction of such business relationship will cause members to sustain irreparable injury by virtue of losing significant numbers of customers and depositors as well as losing the good will and confidence essential to the operation of a bank. Such injury will deprive members of their property without due process of law and denies members the equal protection of the laws guaranteed to them under the Fifth Amendment to the United States Constitution.

12. If the Act and regulations are permitted to

become effective, members will be forced to act as agents of and co-conspirators with defendants for the purpose of: (a) illegally violating depositors' and customers' right of privacy; (b) abridging depositors' and customers' freedom of speech and assembly as guaranteed by the First Amendment of the United States Constitution; (c) engaging in unreasonable searches and seizures in contravention of the Fourth Amendment to the United States Constitution; and (d) depriving depositors and customers of the due process of laws, equal protection of the laws and abridging their privileges and immunities in violation of the Fifth and Fourteenth Amendments of the United States Constitution. As a direct and proximate result, members will be exposing themselves to potential liability from such depositors and customers thereby depriving members of their property without due process of laws and denying them the equal protection of the laws as guaranteed by the Fifth Amendment of the United States Constitution.

13. A number of customers and depositors of members are religious, political and controversial entities or members of such entities to whom the freedom of speech and association is protected under the First Amendment. Such customers and depositors are often the targets of official surveillance because of the unorthodoxy of their beliefs. Disclosure of the information called for by the Act and regulations is a method of implementing such surveillance. Members are illegally being required by the scheme of governmental surveillance encompassed within the Act and regulations to be the perpetrators of illegal searches and seizures as well as a co-conspirator with the government in suppressing the freedom of speech and assembly and the civil rights of such customers and depositors.

14. The plaintiff's members have no plain, speedy or adequate remedy at law. If this Court does not enjoin defendants as hereinafter prayed, the plaintiff and the members will immediately and irreparably suffer injury as alleged.

15. An actual controversy exists between the plaintiff and the defendants. The plaintiff believes and alleges that the Act and regulations are unconstitutional, null and void in their entirety in that they violate Article I and the First, Fourth, Fifth, Ninth and Tenth Amendments to the United States Constitution. At the same time, the plaintiff is informed and believes, and, based upon such information and belief, alleges that defendants contend that the Act and regulations are legal and constitutional in all respects.

WHEREFORE, the plaintiff prays that this court:

1. Issue preliminary and permanent injunctions enjoining and preventing defendants and their agents, servants, employees, representatives and successors from enforcing any of the provisions of the Act and regulations in dispute herein;

2. Issue a declaratory judgment declaring the Act and regulations in dispute herein unconstitutional, null and void in their entirety as being repugnant to Article I and the First, Fourth, Fifth, Ninth and Tenth Amendments to the United States Constitution.

3. Grant plaintiff its costs of suit; and

4. Grant such other and further relief as may be just and proper.

PHILIP E. DIAMOND,
JOHN M. ANDERSON,
EDGAR B. WASHBURN,
LANDELS, RIPLEY & DIAMOND,

By PHILIP E. DIAMOND,
Attorneys for Plaintiff.

Dated: JUNE 22, 1972.

United States District Court
Northern District of California

(No. C–72–1045–WTS)

(First Amended Complaint)

FORTNEY H. STARK, JR., SECURITY NATIONAL BANK, CHARLES C. MARSON, AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, INC., FRED LIEBERMAN, EDWARD C. HARWOOD, CARL BRUER, EDWARD DURELL, AND DOES FIVE THROUGH TWENTY, INCLUSIVE, PLAINTIFFS

v.

JOHN B. CONNALLY, JR., SECRETARY OF THE TREASURY, GEORGE P. SHULTZ, SECRETARY-DESIGNATE OF THE TREASURY, WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, MYLES J. AMBROSE, COMMISSIONER OF CUSTOMS, JOHNNIE M. WALTERS, COMMISSIONER OF THE INTERNAL REVENUE SERVICE, HERMAN NICKERSON, JR., ADMINISTRATOR OF THE NATIONAL CREDIT UNION, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE FEDERAL HOME LOAN BANK BOARD, THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE SECURITIES AND EXCHANGE COMMISSION, AND DOES TWENTY-ONE THROUGH FORTY, INCLUSIVE, DEFENDANTS.

HENRY RAMSEY, JR.,
CHARLES C. MARSON,
PETER SHEEHAN,
American Civil Liberties Union Foundation of Northern California, Inc.,
San Francisco, California 94105

NEIL HORTON,
DEENE SOLOMON,
Oakland, California 94612
Attorneys for Plaintiffs.

Plaintiffs allege:

I

This is an action for injunctive, mandamus, and declaratory relief to prevent the enforcement of an Act of Congress, and Regulations promulgated thereunder, which require the reporting of certain financial transactions and the making and retention of copies of checks and records by banks, other financial institutions, and individuals. This Court has jurisdiction under Title 5, U.S.C., Sections 701–06, and Title 28, U.S.C., Sections 1331, 1332, 1346, 1348, 1349, 1361, 2201, and 2282, as hereinafter more fully alleged.

II

In 1970 the Congress of the United States enacted and the President of the United States signed into law Public Law 91–508, 84 Stat. 1114 et seq., referred to hereinafter as "the Act."

III

In April, 1971, purportedly pursuant to the authority granted to him by the Act, the Secretary of the Treasury promulgated certain regulations adding Part 103 to the Code of Federal Regulations, referred to hereinafter as "the Regulations." Said Regulations will become effective July 1, 1972.

IV

Plaintiff Fortney H. Stark, Jr., is the President of the Security National Bank and a customer of and depositor therein, and a resident of the judicial district of the United States District Court for the Northern District of California.

V

Plaintiff Security National Bank is a duly chartered, insured and operating national bank, with its principal office in Walnut Creek, California.

VI

Plaintiff Charles C. Marson is a resident of Berkeley, California, a customer of and depositor in the Bank of America, a duly chartered, insured and operating national bank with its principal office in San Francisco, California.

VII

Plaintiff American Civil Liberties Union of Northern California, Inc., is a non-profit membership corporation organized under the laws of the State of California, with its principal office in San Francisco, California, which is dedicated solely to the preservation and advancement of the guarantees of individual liberties found in the United States Constitution and the Bill of Rights through litigation, legislation and education. Plaintiff American Civil Liberties Union of Northern California, Inc. is regarded by many as a controversial organization. Plaintiff American Civil Liberties Union of Northern California, Inc. desires, and its members desire, to maintain the identities of its members and contributors in strict confidence.

VII–A

Plaintiff Fred Lieberman is a resident of Elkins Park, Pennsylvania. Plaintiff Edward C. Harwood is a resident of Barrington, Massachusetts. Plaintiff Carl Bruer is a resident of Princeton, New Jersey, Plaintiff Edward Durell is a resident of Columbus, Ohio.

VII–B

Plaintiff Lieberman has repeatedly in the recent past transported, mailed or shipped, or caused to be transported, mailed or shipped, one or more monetary instruments exceeding $5,000 in value from the United States to places outside the United States, and expects to have reason to do so again in the near future. Plaintiff Lieberman objects to those portions of the Act and Regulations that require him to report such transactions because he regards such requirements as unconstitutional, for the reasons more fully alleged hereinafter.

VII–C

Plaintiffs Lieberman, Harwood, Bruer and Durell each maintain a financial interest in and signature authority over one or more bank accounts in foreign countries. Each of said plaintiffs objects to those portions of the Act and Regulations that require him to report such interest and authority to the Government because he regards the such requirements as unconstitutional, for the reasons more fully alleged hereinafter.

VIII

Plaintiffs do not now know the names or capacities of plaintiffs Doe Five through Doe Twenty, inclusive, and will amend this Complaint as soon as the names and capacities of said Plaintiffs are ascertained.

IX

Defendant John B. Connally, Jr. is the Secretary of the Treasury of the United States (hereinafter referred to as "the Secretary"). Defendant Charles Shultz has been appointed as Secretary of the Treas-

ury, subject to confirmation by the United States Senate. Defendants Connally and Shultz are charged with the duty and responsibility of enforcing the Act and Regulations.

X

Defendant William B. Camp is Comptroller of the Currency; defendant Myles J. Ambrose is Commissioner of Customs; defendant Johnnie M. Walters is Commissioner of the Internal Revenue Service; defendant Herman Nickerson, Jr. is Administrator of the National Credit Union. Defendants Camp, Ambrose, Walters, Nickerson, and the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission are charged under the Act and Regulations with the duty and responsibility of enforcing the Act and Regulations.

XI

Plaintiffs do not now know the names or capacities of Defendants Doe Twenty-One through Doe Forty, inclusive, and will amend this Complaint as soon as the names and capacities of said Defendants are ascertained.

XII

The Act and Regulations require that Plantiff Security National Bank affirmatively and promptly report to the Secretary, in addition to other transactions, the following:

a. the transportation by it of a monetary instrument having a value of more than $5,000.00 into or out of the United States;

b. each deposit, withdrawal, exchange of currency or other payment by, through, or to Security National Bank which involves a transaction

in currency of more than $10,000.00; except that plaintiff Security National Bank is not required to report transactions with an established customer which it reasonably concludes does not exceed in its currency transactions amounts commensurate with the customary business practice of the customer, unless otherwise directed in writing by the Secretary of the Treasury.

XIII

The Act and Regulations further require that plaintiff Security National Bank retain either the original or a microfilm or other copy or reproduction of each of the following:

a. the front and back of all checks and money orders drawn on it; except checks on accounts which can be expected to have drawn on them an average of at least 100 checks per month per calendar year or per occasion for the issuance of checks and which meet certain other specific criteria are exempt;

b. records of each transaction involving a checking or savings account;

c. records of each extension of credit of more than $5,000.00 not secured by real property;

d. records sufficient to reconstruct a demand deposit account and to trace a check deposited in such account through its domestic processing system or to supply a description of a deposited check.

XIV

The reporting and recordkeeping requirements under the Act and Regulations may be modified or expanded at the will of the Secretary under C.F.R. 103.45(a), which provides, in part, as follows:

The Secretary, in his sole discretion, may by

written order or authorization make exceptions to, grant exemptions from, impose additional record keeping or reporting requirements authorized by statute, or otherwise modify the requirements of this part. Such exceptions, exemptions, requirements or modfications may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions.

XV

If the Act and Regulations are permitted to become effective, plaintiff Security National Bank will be forced to violate good banking practice and its customers' right of privacy and confidentiality in their financial and personal affairs and as a direct and proximate result thereof will lose significant numbers of its customers and substantial deposits. The monetary damage to plaintiff Security National Bank as a direct and proximate result of the implementation of the Act and Regulations will be in excess of $10,000.00.

XVI

Plaintiff American Civil Liberties Union of Northern California, Inc. maintains accounts in the Wells Fargo Bank and Trust Company at its Market-Montgomery Street branch in the City and County of San Francisco.

The Act and Regulations provide that the Secretary may make any information set forth in any reports received by him pursuant to the Regulations available to any other department or agency of the United States upon the written request of the head of such department or agency.

The Federal Bureau of Investigation is such an agency of the United States.

Neither the Act nor the Regulations provide that information received from the Secretary by a department or agency of the United States must be maintained confidentially.

As heretofore alleged by plaintiff Security National Bank, the Regulations may be modified or expanded at the will of the Secretary and said modifications or expansions may be made to apply to particular persons or to particular classes of persons.

If the Act and Regulations are permitted to become effective, plaintiff American Civil Liberties Union of Northern California, Inc. will no longer be able to reasonably and effectively maintain the anonymity of its members and contributors and as a direct and proximate result thereof will lose significant numbers of its members and substantial contributions. The monetary damage to plaintiff American Civil Liberties Union of Northern California, Inc. as a direct and proximate result of the implementation of the Act and Regulations will be in excess of $10,000.00.

XVII

Plaintiff Stark is a depositor in plaintiff Security National Bank and, as heretofore alleged, plaintiff Marson is a depositor in the Bank of America.

If the Act and Regulations are permitted to become effective, plaintiffs Stark and Marson's contributions and dues to organizations and associations may be easily and simply determined by the Secretary or his designate from information required to be maintained and reported pursuant to the Regulations and as a direct and proximate result thereof plaintiffs Stark and Marson will suffer a chilling effect upon their right of association as guaranteed by the First Amendment to the United States Constitution and an abridgment of their constitutional right of privacy.

If the Act and Regulations are permitted to become effective:

a. the information required to reconstruct plaintiffs Stark and Marson's demand deposit accounts and to trace any check deposited in such accounts through the banks' domestic processing systems must be maintained and is subject to seizure, without notice to plaintiffs Stark or Marson, by written order of the Secretary;

b. plaintiffs Stark and Marson's banks must maintain the original or reproduce each statement, ledger card or other record concerning their respective deposit accounts, showing each transaction in, or with respect to, that account and such records are subject to seizure, without notice to plaintiffs Stark or Marson, by written order of the Secretary; and

c. plaintiffs Stark and Marson's banks must maintain the original or reproduce each check or money order drawn from their respective deposit accounts and submit the same to the Secretary, without notice to plaintiffs Stark or Marson, upon written order of the Secretary.

As a direct and proximate result thereof, plaintiffs Stark and Marson's right to be free from unreasonable searches and seizures under the Fourth Amendment of the United States Constitution will be violated.

XVII–A

If the Act and Regulations are permitted to become effective, plaintiff Lieberman will be forced to report to the Government the details of each transaction in which he transfers a monetary instrument of a value in excess of $5,000 from a place inside the United States to a place outside the United States.

As a direct and proximate result thereof plaintiff Lieberman's right to be free of unreasonable seizures and his right to privacy will be violated.

XVII–B

If the Act and Regulations are permitted to become effective, plaintiffs Lieberman, Harwood, Bruer and Durell will each be forced to report to the Government his financial interest in and signature authority over his bank account or accounts in foreign countries. As a direct and proximate result thereof said plaintiffs' rights to be free of unreasonable seizures and rights of privacy will be violated.

XVIII

Plaintiffs have no plain, speedy or adequate remedy in the ordinary course of law. If this Court does not enjoin defendants as hereinafter prayed, plaintiffs will immediately and irreparably suffer injury as hereinbefore alleged.

XIX

An actual controversy exists between plaintiffs and defendants. Plaintiffs believe and allege that the Act and Regulations are unconstitutional, null and void in their entirety because they violate the First, Fourth, Fifth, Ninth, Tenth and Fourteenth Amendments to the United States Constitution. Plaintiffs are informed and believe and, based upon such information and belief, allege that defendants contend that the Act and Regulations are legal and constitutional in all respects.

WHEREFORE, plaintiffs pray that this Court:

1. Issue preliminary and permanent injunctions and its writ of mandate enjoining and preventing defendants and their agents, servants, employees, representa-

tives and successors from enforcing any of the provisions of the Act and Regulations in dispute herein;

2. Issue a declaratory judgment declaring the Act and Regulations in dispute herein unconstitutional, null and void in their entirety as being repugnant to the First, Fourth, Fifth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitution;

3. Grant plaintiffs the costs of suit herein; and

4. Grant such other and further relief as is just.

HENRY RAMSEY, JR.,
CHARLES C. MARSON,
PETER SHEEHAN,
NEIL HORTON,
DEENE SOLOMON,
By CHARLES C. MARSON,
Attorneys for Plaintiffs.

Dated: JULY 14, 1972.

United States District Court
Northern District of California

(No. 72 1045)

FORTNEY H. STARK, JR., ET AL., PLAINTIFFS

v.

JOHN B. CONNALLY, JR., SECRETARY OF THE TREASURY OF THE UNITED STATES, ET AL., DEFENDANTS

(No. 72 1157)

THE CALIFORNIA BANKERS ASSOCIATION, PLAINTIFF

v.

JOHN B. CONNALLY, JR., SECRETARY OF THE TREASURY OF THE UNITED STATES, ET AL., DEFENDANTS

MEMORANDUM OF DECISION

Before: HAMLIN,* *Circuit Judge,* EAST and SWEIGERT, *District Judges.*

SWEIGERT, J.:

Plaintiffs in No. 72–1045 include several named individuals who are bank customers, also the American Civil Liberties Association, suing on behalf of itself as a bank customer and also on behalf of such of its numerous members as are also bank customers; also a bank—the Security National Bank. The only plaintiff in No. 72–1157 is the California Bankers Association, suing on behalf of its membership, which comprises all California banks.

*Judge Hamlin dissents in part.

These plaintiffs seek to enjoin the Secretary of the Treasury from enforcing the provisions of the so-called Bank Secrecy Act, enacted by the Congress on October 26, 1970, to be effective May 1, 1971, and the Regulations issued thereunder on March 31, 1972 (but by their own terms not effective until July 1, 1972) upon the grounds that such enforcement poses grave and irreparable injury to their constitutional rights—their right to freedom from unreasonable search; their constitutional right of privacy; their privilege against self-incrimination; their right to due process as it may affect banks and bank customers, and also the right of private association protected by the First Amendment.

The Bank Secrecy Act (12 U.S.C. Sec. 1829b; 31 U.S.C. Secs. 1051–1122) requires banks and similar financial institutions to keep certain records and authorizes the Secretary of the Treasury to require such institutions and persons participating in transactions with such institutions to report financial transactions to the Secretary for the stated reason (Sec. 1051) that such records and reports have a high degree of usefulness in criminal, tax and other regulatory investigations.

The record-keeping provision of the Act is 12 U.S.C. Sec. 1829b—implemented by Treasury Regulation 31 C.F.R. sub-part C, Secs. 103.31–103.37. Section 1829b (b)(c)(d) broadly requires financial institutions to maintain, not only customary ledger card records for commercial and savings accounts, but also to maintain microfilm of all checks, drafts or similar instruments drawn on or presented for payment or received for deposit or collection—an authorization which the Secretary has implemented (Regulation 103.31–103.37) with exceptions only for large accounts involving dividend, payroll or employee and medical benefit checks.

The temporary restraining order heretofore issued in this case has not been directed to the record-keeping provisions of the Act, and since we find no constitutional violation in these record-keeping provisions, as such, we reject plaintiffs' contentions insofar as those portions of the Act are concerned.

Turning, however, to the reporting provisions of the Act, those provisions are contained in Title 31 U.S.C. Secs. 1081, 1082, 1083, 1101 and 1121 and have been implemented by Treasury Regulations 31 C.F.R. Part 103, sub-part B, Secs. 103.21–103.26. These reporting provisions fall into two categories: (1) Those relating to *foreign* financial transactions (Secs. 1101 and 1121), and (2) those relating to *domestic* financial transactions (Sec. 1081).

Since, in our opinion, the reporting provisions relating to foreign transactions present no great problem we will first dispose of plaintiffs' challenges to those provisions.

REPORTING OF FOREIGN FINANCIAL TRANSACTIONS

31 U.S.C. Sec. 1101 (Reports of Exports and Imports of Monetary Instruments) provides in substance that whoever knowingly transports monetary instruments from the United States or into the United States or receives such at the termination of the transportation to the United States in an amount exceeding $5,000 shall file a report in such form and detail as the Secretary may require setting forth certain specified (sub. b) information—with certain qualifications (sub. c) as to common carriers.

Regulation 103.23 (Reports of Transportation of Currency or Monetary Instruments), implementing Section 1101, excepts transfers through normal banking procedures and makes some other exceptions (sub. c).

31 U.S.C. Sec. 1121 (Foreign Transactions) provides in substance that the Secretary of the Treasury, having due regard for the need for controlling export and import of currency and also due regard to avoidance of unreasonably burdening legitimate transactions with foreign financial agencies, shall by regulation require residents of the United States, who engage in any transactions with a foreign financial agency, to maintain records or file reports, or both, setting forth such of the certain stated information as the Secretary may require. (See also, Sec. 1122.)

Regulation 103.24, implementing Section 1121, provides in substance that each person subject to the jurisdiction of the United States, having a financial interest in a bank, securities or other financial account in a foreign country, shall report such relationship as required on his federal income tax return.

We are of the opinion that these portions of the Act, dealing with export and import of monetary instruments and with foreign monetary interests or accounts, do not violate any constitutional provision.

First of all, there is the general rule (which must always be the point of departure in cases calling for judicial review of legislation enacted by the Congress), that the wisdom of legislation and the need for it are matters for the Congress to decide and the Courts should not substitute their judgment for that of the Congress. (See, Justice Stewart dissent in *Griswold* v. *Connecticut*, 381 U.S. 479 (1965) at 526. The foregoing reporting provisions of the Act are limited to a narrowly described area of international financial transactions and the Congressional decision falls within the general rule.

The Supreme Court, when dealing with matters of reporting to and surveillance by the executive, has

traditionally recognized a distinction between domestic surveillance, on the one hand, and surveillance where foreign nations are involved, pointing out that what might be impermissible in domestic cases may be constitutional where foreign powers are involved. See, *United States* v. *United States District Court*, — U.S. — (6/19/72) (slip opinion pp. 10–12; p. 23).

Furthermore, the Act contains procedural protections applicable to its provisions for reporting these foreign transactions. For example, with respect to enforcement of Section 1101, the Act (Section 1105) provides that, if the Secretary has reason to believe that monetary instruments are being transported without reporting or with false reports, he may apply to the Court for a search warrant. Similarly, with respect to enforcement of Section 1121(b) (foreign transactions) that section provides that no person required to maintain records under the section shall be required to produce or disclose the same except with a duly authorized subpoena or summons as may be otherwise required by law.

We conclude that these provisions violate no constitutional guarantee and that, since these provisions, requiring report of certain foreign financial transactions, are clearly separable from provisions pertaining to the reporting of domestic financial transactions, plaintiffs' motion for a preliminary injunction as to the former is denied.

REPORTING OF DOMESTIC FINANCIAL TRANSACTIONS

A more formidable problem is presented by the Act's provisions authorizing the Secretary to require reporting to him by financial institutions, and also by persons participating in transactions with them, of domestic financial transactions.

31 U.S.C. Sec. 1081 (Domestic Currency Trans-

action-Reports) provides that transactions involving any financial institution shall be reported to the Secretary at such time and in such manner, and in such detail, as the Secretary may require, if they involve the payment, receipt or transfer of United States currency or such other monetary instruments, as the Secretary may specify, in such amounts, denominations, or both, or under such circumstances, as the Secretary shall by regulation prescribe.

Section 1082 provides that the report of any such transaction shall be signed or otherwise made both by the domestic financial institutions involved and by one or more of the other parties thereto or participants therein as the Secretary may require.

Regulation 103.22 (Reports of Currency Transactions), which partially implements these sections, requires financial institutions to report transactions involving currency of more than $10,000.

It will be noted that, although to date the Secretary has required reporting only by the financial institutions and then only of *currency* transactions over $10,000, he is empowered by the Act, as indicated above, to require, if he so decides, reporting not only by the financial institution, but also by other parties to or participants in transactions with the institutions and, further, that the Secretary may require reports, not only of currency transactions but of any transaction involving any monetary instrument—and in any amount—large or small.

Since, as already noted, the record-keeping provisions of the Act require banks to microfilm all checks, drafts or similar instruments drawn on or presented to or received for deposit or collection by a bank, and since, as noted, the Secretary may require reporting not only by the bank, but also by the other parties to, or participants in, any bank transaction,

the required report can include, not only the bank's usual record of its customer's account, but also such information as is disclosed on the face or back of any check, draft or similar monetary instrument—i.e., information concerning the identity of the persons, firms or organizations with whom the drawer has chosen to deal and, further, such additional "detail" concerning the transactions "as the Secretary may require" from both the bank and other parties or participants.

These reporting provisions of the Act must be considered along with other general provisions, e.g., Section 1053 which vests broad power in the Secretary to prescribe such regulations as he may deem appropriate to carry out the purposes of the Act; also under Section 1055 the Secretary may make and revoke exemptions from the Act's requirements as he may deem appropriate; these exemptions may be conditional or unconditional, by regulation or by order or by licensing, and they may relate to particular transactions or to particular parties. The Secretary has broadly implemented these authorizations in his Regulation 103.45, providing that in his sole discretion he may by written order make exceptions or exemptions or impose additional record-keeping or reporting requirements authorized by the statute or otherwise modify the requirements of the regulations.

Further, Section 1061 provides that the Secretary of the Treasury shall, upon such conditions and procedures as he may by regulation prescribe, make any information set forth in the required reports available, for any purpose consistent with the provisions of the Act, to any other federal agency at its request.

The question is whether these provisions, broadly

authorizing an executive agency of government to require financial institutions and parties to or participants in transactions with them, to routinely report to it, without previous judicial or administrative summons, subpoena or warrant, the detail of almost every conceivable financial transaction as a surveillance device for the discovery of possible wrongdoing on the part of bank customers, is such an invasion of a citizen's right of privacy as amounts to an unreasonable search within the meaning of the Fourth Amendment.[1]

That there is such a thing as a constitutionally protected "right of privacy" has been recognized by the Supreme Court in such cases as *Griswold* v. *Connecticut,* 381 U.S. 479 (1965); *Katz* v. *United States,* 389 U.S. 347 (1967) and most recently in *United States* v. *United States District Court* — U.S. — (June 19. 1972).[18]

In *Katz* v. *United States, supra,* the Supreme Court, holding that government eavesdropping violated the right of privacy upon which a person relied while using an otherwise public telephone booth, said: "The Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. See, *Lewis* v. *United States,* 385 U.S. 206, 210 (1966); *United States* v. *Lee,* 274 U.S. 559,

[1] It will be noted that anyone who refuses to so report does so upon peril of criminal prosecution under Section 1058.

[18] See also, *Doe* v. *McMillan,* 442 F. 2d 879 (D.C. Cir. 1971); *York* v. *Story,* 324 F. 2d 250 (9th Cir. 1963); *Zimmerman* v. *Wilson,* 81 F. 2d 847, 849 (3d Cir. 1936). But see, 25 F. Supp. (1938), aff'd in 105 F. 2d 583, 586 (1939); *Dietmann* v. *Time,* 284 F. Supp. 925 (C.D. Cal. 1966); *City of Carmel* v. *Young,* 2 Cal. 3d 259, 85 Cal. Rptr. 1 (1970); *Brex* v. *Smith,* 146 Atl. 34 (New Jersey 1969).

563 (1927). But what he seeks to preserve as private, even in an area accessible to the public may be constitutionally protected. See, *Rios* v. *United States,* 364 U.S. 253 (1960); *Ex parte Jackson,* 96 U.S. 727, 733 (1877) * * * No less than an individual in a business office, in a friend's apartment, or in a taxicab, a person in a telephone booth may rely on the protection of the Fourth Amendment. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call, is surely intitled to assume that the words he utters into the mouthpiece will not be broadcast to the world. To read the Constitution more narrowly is to ignore the vital role that the public telephone has come to play in private communication."

Harlan, J., concurring at p. 360–361, concerning what is meant by privacy, added: "My understanding of the rule is that there is a two-fold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable'."

In the recent case of *United States* v. *United States District Court,* — U.S. — (6/19/72) the Supreme Court, considering a presidential claim of legal right to wire tap telephone conversations (without court approval) when deemed necessary to protect the nation from attempts of domestic organizations to attack and subvert its existing form of government, again unanimously held that the Fourth Amendment shields such a conversation from surveillance; that the government's duty to safeguard domestic security must be weighed against the potential danger that unreasonable surveillances pose to individual privacy; that Fourth Amendment freedoms cannot be properly guaranteed if domestic security surveillances are conducted solely within the discretion of the executive

branch without the detached judgment of a neutral magistrate, especially when resort to appropriate warrant procedure would adequately serve the legitimate purposes of domestic security searches.

In *City of Carmel* v. *Young, supra,* the California Supreme Court, citing the principle laid down by the Supreme Court of the United States in *Griswold* v. *Connecticut, supra,* held that a statute requiring public officials and candidates for public office to disclose investments in excess of $10,000, although a laudable and proper legislative concern with possible conflicting interests of public servants, was, nevertheless, an invalid intrusion upon the right of privacy protected by the Fourth Amendment.

Does the constitutional principle laid down by the Supreme Court in the above cases apply in the present case where the government claims legal right to maintain routine surveillance, without summons, subpoena or warrant, over the details of citizens' financial transactions with banks and similar financial institutions for the broadly stated purpose of helping executive agencies of the government to investigate, not only tax and criminal matters, but also other unspecified "regulatory investigations"?

At the outset we must note the holdings in this and other circuits that communications between banks and their customers are not privileged communications in the technical sense of that term; that bank customers have no rights in bank records; that such records may be subpoenaed from the bank, even over the objection of the depositor, notwithstanding the fact that the records concern the customer's account; that customers have no standing to object to subpoenas requiring their bank to produce records of the customer's accounts and that the production by the bank of its records under subpoena is not, as to the customer,

either a Fourth Amendment illegal search and seizure nor a Fifth Amendment self-incrimination. *Harris* v. *United States,* 413 F.2d 316 (9th Cir. 1969). See also, *Galbraith* v. *United States,* 387 F.2d 617 (10th Cir. 1968); *Application of Cole,* 342 F.2d 5 (2d Cir. 1965); *De Masters* v. *Arend,* 313 F.2d 79, 85 (9th Cir. 1963).

It seems, therefore, that bank customers have no recognizable right to claim invasion of their privacy merely because a government agency, by summons or subpoena, requires a bank to produce the bank's own records pertaining to the customer's financial transactions.

It will be noted, however, that the cases enunciating this rule all involved situations in which (1) the government agency was seeking only the bank's own records of the customer's account, and (2) the government agency was following established procedures for obtaining such records by means of judicial or administrative summons, subpoena or warrant, e.g., 26 U.S.C. Sec. 7602 et seq., and (3) the government agency was seeking records claimed to be relevant and material to a specific matter then under inquiry, i.e., the correctness of a particular taxpayer's return.

In the operation of the domestic financial transaction reporting provisions of the Act here in question, none of these elements are present.

The power of the Secretary under the Act in question to require reports is not limited to the bank's own records or to information based thereon, e.g., the bank's ledger card record of the state of the customer's account or its own deposit slips or passbook entries. As already indicated, the Act goes much further to authorize the mandatory disclosure of information obtainable from microfilming checks and drafts and also detailed information required from the parties to and participants in each transaction.

We do not consider it necessary to pass upon the technical question whether customer's checks, as such, become the property of the bank during the banking process. We do note, however, that banks have traditionally returned, either directly or through the clearing house, all checks each month to the original drawer of the checks. It would seem reasonable therefore, for the drawer of a check to regard himself as the real owner of his checks, subject only to normal banking processing, and to expect that detailed information shown only on the face of his checks will not be automatically broadcast throughout the vast government bureaucracy without at least some notice, summons, subpoena or warrant in connection with some legitimate pending inquiry.

Certainly, at least, a bank customer reasonably expects privacy concerning details of his personal financial affairs not shown on either the bank's own records or on the face of the customer's checks and which must be disclosed only by the report required of the bank customer, himself, as a party to or participant in a financial transaction.

It would seem that, within these limitations, and within the meaning of *Katz,* supra, a bank customer does expect a degree of privacy in these matters and that such an expectation is one that society has been prepared to recognize as "reasonable."

As stated by the Supreme Court of California in *City of Carmel* v. *Young,* supra (Burke, J.) (p. 268): "In any event we are satisfied that the protection of one's personal financial affairs and those of his (or her) spouse and children against compulsory disclosure is an aspect of the zone of privacy which is protected by the Fourth Amendment and which also

falls within that penumbra of constitutional rights into which government may not intrude absent a showing of compelling need and that the intrusion is not overly broad" * * * "the law must be shown necessary and not merely rationally related to the accomplishment of a permissible state policy. *Griswold* v. *Connecticut, supra,* 381 U.S. 479, 497. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose. *Shelton* v. *Tucker, supra,* 362 U.S. 479."

The Act challenged in our pending case makes no provision for any summons, either judicial or administrative, as the means whereby the Secretary can demand reports from banks and their customers concerning the details of their financial transactions. He is empowered to peremptorily require such reports routinely—automatically—from the banks and from all parties and participants in financial transactions without any procedure whereby either the bank or the customer may in advance test the reasonableness of the demand.

Sections 7602 et seq., of the Internal Revenue Act of 1954 (26 U.S.C.), already above mentioned, establish procedures whereunder the Secretary of the Treasury, for the limited purpose of ascertaining the correctness of an individual's tax return, may summon the person liable or any person having possession or care of books of account relating to the business of that person or any other person, to appear and to produce such records and to give testimony as may be relevant or material to such inquiry.

Under these procedures the ultimate enforcement of the summons can be judicially controlled when challenged either by the Bank or by the customer-taxpayer himself as an intervening third party inter-

est whose financial transactions are involved. *Reisman* v. *Coplin*, 375 U.S. 440 (1964).[2]

The Act here in question contains no such procedural safeguards with respect to reporting of domestic transactions as are contained in this existing law whereunder the Treasury is already given ample but orderly opportunity to investigate tax violations by citizens.

Further, the Act presents the question whether there is any reasonable relationship between the end sought to be achieved, i.e., possible assistance to the government in its investigations of citizens, on the one hand, and on the other hand, the peremptory, sweeping, unsafeguarded reporting provisions which it authorizes the Secretary to require.

---

[2] It is true that in *Donaldson* v. *United States*, 400 U.S. 517 (1971) the Court limited to some extent the holding of *Reisman* that the customer-taxpayer would have a right to intervene in the summons proceedings, holding that such a right to intervene is not absolute; that for example, there would be no right to intervene when the taxpayer has no proprietary interest in the summoned records (his sole interest being that they presumably contain details of payments to him); that, since he has no other protectible interest by way of privilege or otherwise, he had no absolute right to intervene; that an IRS summons may be issued in connection with a tax investigation if it is issued in good faith and prior to any recommendation for criminal prosecution. But, as pointed out by J. Douglas, concurring (p. 536), a taxpayer would clearly have standing to raise a claim of violation of his constitutional rights if a third party were ordered to produce records belonging to the taxpayer, citing *United States* v. *Kordell*, 397 U.S. 1, 7; and *Reisman* v. *Coplin*, 375 U.S. 440, 445. Further, legislation is now pending in Congress to modify any effect of *Donaldson* by providing that the government, when acting under IRS statutes, must first get the consent of the bank customer or show cause to obtain bank records concerning the customer.

There can be no question about the power of Congress to require records and reports from business entities and citizens (*United States* v. *Morton Salt*, 338 U.S. 632 (1950)) provided, however, that any such records or reports bear some reasonable relationship to the matters under inquiry. See *Federal Trade Commission* v. *American Tobacco Co.*, 264 U.S. 298 (1924), where the Court held that "a governmental fishing expedition into private papers on the possibility that they may disclose evidence of a crime, is so contrary to first principles of justice, if not defiant of the Fourth Amendment, that an intention to grant the power to a subordinate agency will not be attributed to Congress unless expressed in the most explicit language" . . . and . . . "access is confined to such documents as are relevant evidence to the inquiry or complaint before the commission. . . ."

In *Shapiro* v. *United States*, 335 U.S. 1 (1948) at 32–33 the Supreme Court recognized that "There are limits which the government cannot constitutionally exceed in requiring the keeping of records which may be inspected by an administrative agency and may be used in prosecuting statutory violations committed by the record keeper himself," adding, "But no serious misgiving that those bounds have been overstepped would appear to be evoked when there is a sufficient relation between the activity sought to be regulated and the public concern so that the government can constitutionally regulate or forbid the basic activity concerned and can constitutionally require the keeping of particular records subject to inspection by the administrator."

Various tests have been formulated to ascertain the reasonableness of a search and seizure, e.g., a search is unreasonable when "it is out of proportion to the ends sought" (*McMann* v. *Securities & Ex-*

change Commission, 874 F.2d 377, 379 (2d Cir. 1937, J. Learned Hand), "balancing the need to search against the invasion which the search entails." *Camara* v. *Mun. Ct.*, 387 U.S. 523 (1967); "a nexus . . . between the item seized and criminal behavior." *Warden* v. *Hayden*, 387 U.S. 294, 307 (1967).

As compared with the relatively specific and certainly vital national interests involved in *United States* v. *United States District Court*, supra, i.e., subversion of our form of government, which the Supreme Court has held, nevertheless, insufficient to justify invasion without prior judicial approval, of conversational privacy by wire tap surveillance, the stated reason given in the Act now in question, for invasion of bank customers' reasonable expectation of a degree of privacy, i.e., the mere general possibility that such surveillance will help in criminal, taxation and unspecified governmental investigations, is far more vague and far less convincing.

The same may be said of *City of Carmel* v. *Young*, supra, wherein the court held that even such an important and specific subject of legislative concern as conflict of interest among public employees was insufficient to justify an overbroad invasion of one's right of privacy in his financial affairs.

How far-fetched is the relationship between the surveillance authorized by this Act and the general expectation that it may uncover wrongdoing is indicated in its legislative history wherein an Assistant Secretary of the Treasury, testifying before a Congressional Committee stated: "We believe that the imposition of an all-encompassing requirement to photograph all checks drawn on U.S. banks . . . could be impractical, wasteful, and counter-productive. In excess of 20 billion checks are drawn annually in the United States and flow through the

banking system and only a small percentage of these are likely to be of use in criminal, tax or regulatory investigations and proceedings." Senate Hearings, p. 178.

Similarly, a Commissioner of Internal Revenue testified as follows: ". . . Realistically, however, the creation of a mass of paper beyond our capacity to digest and utilize could have the effect of submerging and making unobtainable information of special interest to us. In other words, a rifle rather than a shotgun may represent the best approach to the problem." House Hearings, p. 68.

Remarkably, the government in its brief (7/13/72, p. 5) seems to recognize these considerations by interpreting the reporting provisions of the Act to mean that: ". . . Nothing in the statute gives the government any greater right to *access* to bank records than it possessed before. Consequently, ***whenever the federal government desires to inspect any bank records kept under the provisions of the new statute, the federal government must resort to using an administrative summons or judicial subpoena as it did in the past.*** Upon the issuance of such a summons or subpoena, if the bank customer felt that the use of the summons or subpoena constituted an illegal search and seizure under the Fourth Amendment, that contention could be contested in court in the same manner as it heretofore has been contested." (Emphasis added.)

Of course, if the government intends to obtain the information contemplated by the reporting provisions of the Act only through use of administrative summons or judicial subpoena, as it has done in the past under existing law, then one may well question the need for this new legislation. However, we must look, not merely to what the government says it intends

to do, but to the much broader authorization of the Act itself.

For the reasons above set forth we are of the opinion that the Act in question, insofar as it authorizes the Secretary to require virtually unlimited reporting from banks and their customers of domestic financial transactions as a surveillance device for the alleged purpose of discovering possible, but unspecified, wrongdoing among the citizenry, so far transcends the constitutional limits, as laid down by the United States Supreme Court for this kind of legislation, as to unreasonably invade the right of privacy protected by the Bill of Rights, particularly the Fourth Amendment provisions protecting "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures."

We therefore, deem it unnecessary to consider plaintiffs' claims based upon the Fifth Amendment privilege against self-incrimination, the Fifth Amendment requirement of due process, and the First Amendment protection of freedom of association.

Plaintiffs' motion in the above-consolidated cases for a preliminary injunction is granted to the extent of enjoining defendant from enforcing the reporting provisions of the Act concerning domestic financial transactions—but in no other respect.

This Memorandum constitutes the findings and conclusions of the Court within the meaning of Rules 52 and 65 of Federal Rules of Civil Procedure.

Dated: August 4th, 1972.

WILLIAM G. EAST,
District Judge.

W. T. SWEIGERT,
District Judge.

(*Stark, et al.* v. *Connally, et al.*—No. 72–1045)

(*California Bankers Association* v. *Connally, et al.*—No. 72–1157)

HAMLIN, *Circuit Judge,* dissenting and concurring:

I concur in that portion of the majority opinion in the above case which upholds the constitutionality of 31 U.S.C. §§ 1101, 1121 and 1122, and the Treasury regulations implementing said sections.

I respectfully dissent, however, from that portion of said opinion which holds that 31 U.S.C. §§ 1081, 1082 and 1083 relating to domestic banking transactions are unconstitutional.

As I see it, there is no essential difference between the statutes covering domestic and those covering foreign banking requirements. The majority opinion refers to no authority which is directly on point. The references therein to cases involving conversational privacy are to me inapposite. Any person or organization using banks for their own purposes does so knowing that the Code sections in question permit access to bank records by the government and reports by the banks concerning those records.

Courts should be slow in finding a Congressional enactment unconstitutional.

In this case, if any hardships result by reason of these statutes, application can be made to Congress for relief.

O. D. HAMLIN.

United States District Court
Northern District of California

(No. 72–1045)

FORTNEY H. STARK, JR., ET AL., PLAINTIFFS

v.

JOHN B. CONNALLY, JR., SECRETARY OF THE TREASURY OF THE UNITED STATES, ET AL., DEFENDANTS

(No. 72–1157)

THE CALIFORNIA BANKERS ASSOCIATION, PLAINTIFF

v.

JOHN B. CONNALLY, JR., SECRETARY OF THE TREASURY OF THE UNITED STATES, ET AL., DEFENDANTS

ORDER GRANTING IN PART PRELIMINARY INJUNCTION

These actions having regularly come on for hearing pursuant to 28 U.S.C. §§ 2282 and 2284, F.R.Civ.P. 65, and LR 17, 114 and 117, Honorable William T. Sweigert, District Judge, Honorable William G. East, Senior District Judge, and Honorable Oliver D. Hamlin, Senior Circuit Judge, presiding, upon the plaintiffs' motion for a preliminary injunction and defendants' cross-motion to dismiss, and a memorandum of decision setting forth and specifying findings of fact and conclusions of law in accordance with F.R.Civ.P. 52 and 65(d) having been duly rendered and filed herein on September 11, 1972:

NOW, THEREFORE, in accordance with said memorandum of decision, it is hereby

(1) *Ordered* that the temporary restraining order heretofore entered in this action on June 30, 1972, be and it hereby is dissolved; and it is further

(2) *Ordered* that, it having been decided by the Court that certain provisions of Public Law 91–508, 84 Stat. 1114 (enacted October 26, 1970), are repugnant to Amendment IV of the Constitution of the United States—to wit: Sections 221, 222, and 223 of Chapter 2 of Title II (Short title: "Currency and Foreign Transactions Reporting Act") of said Public Law 91–508, 84 Stat. at 1122 (now contained in Sections 1081, 1082, and 1083 of Title 31, United States Code), plaintiff's motion to enjoin the enforcement, operation and execution of said specified provisions of said law is granted pending final adjudication of this action, and that defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order, be and they hereby are enjoined from enforcing and from implementing by regulations under Part 103, Subparts B and D of Title 31, Code of Federal Regulations, or otherwise, the provisions contained in Sections 1081, 1082, and 1083 of Title 31, United States Code, until further order of this Court or until the adjudication of this action otherwise becomes final; and it is further

(3) *Ordered* that, it having been decided by the Court that the provisions of said Public Law 91–508, other than those specifically referred to and enjoined in clause (2) above are not repugnant to any provision of the Constitution of the United States, plaintiff's motion to enjoin the enforcement, operation and execution of all other provisions of said law—to wit: those provisions of Titles I and II of said Public Law 91–508, 84 Stat. 1114–1124, now contained in Sections 1730d, 1829b, and 1951 through 1959 of Title 12,

United States Code, and in Sections 1051 through 1062, and 1101 through 1122 of Title 31, United States Code, is denied in all respects; and it is further

(4) *Ordered* that defendants' motion to dismiss the complaint for failure to state claims upon which relief can be granted is denied without prejudice.

Ordered in accordance with 28 U.S.C. § 2284(5) this 18th day of October, 1972, at San Francisco, California.

WILLIAM G. EAST,
Senior District Judge.

WILLIAM T. SWEIGERT,
District Judge.

In the United States District Court for the Northern District of California

(No. C-72-1045-WTS)

FORTNEY H. STARK, JR., SECURITY NATIONAL BANK, CHARLES C. MARSON, AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, INC., FRED LIEBERMAN, EDWARD C. HARWOOD, CARL BRUER, EDWARD DURELL, AND DOES FIVE THROUGH TWENTY, INCLUSIVE, PLAINTIFFS

v.

JOHN B. CONNALLY, JR., SECRETARY OF THE TREASURY, GEORGE P. SHULTZ, SECRETARY-DESIGNATE OF THE TREASURY, WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, MYLES J. AMBROSE, COMMISSIONER OF CUSTOMS, JOHNNIE M. WALTERS, COMMISSIONER OF THE INTERNAL REVENUE SERVICE, HERMAN NICKERSON, JR., ADMINISTRATOR OF THE NATIONAL CREDIT UNION, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE FEDERAL HOME LOAN BANK BOARD, THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE SECURITIES AND EXCHANGE COMMISSION, AND DOES TWENTY-ONE THROUGH FORTY, INCLUSIVE. DEFENDANTS

JAMES L. BROWNING, JR.,
United States Attorney.
JOHN M. YOUNGQUIST,
Assistant United States Attorney,
Chief, Tax Division.
San Francisco, California 94102,
Attorneys for Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM ORDER GRANTING IN PART PRELIMINARY INJUNCTION

NOTICE IS HEREBY GIVEN that all defendants above named hereby appeal to the Supreme Court of the United States from that portion of the Order Granting In Part Preliminary Injunction filed in this action on October 18, 1972, which holds under clause (2) thereof, an Act of Congress (to wit: Public Law 91-508, 84 Stat. 1114) to be unconstitutional in part, said order being an interlocutory order granting an interlocutory injunction restraining the enforcement of said Act in part.

This appeal is taken and this notice is filed pursuant to 28 U.S.C. §§ 1252, 1253, 2101(a), and 2282, and Rules 10 and 11 of the Rules of the Supreme Court of the United States.

Please take Further Notice that a previous notice of appeal in this action was filed by defendants on October 6, 1972, from that portion of the decision of the three-judge Court filed herein on September 11, 1972, which could be construed as an appealable interlocutory order. The order of October 18, 1972, granting in part preliminary junction, may now be construed as the appealable order issuing from said decision and may accordingly moot the notice of appeal filed October 6, 1972. Therefore, the instant notice of appeal is filed by defendants.

JAMES L. BROWNING, JR.,
United States Attorney.

By JOHN M. YOUNGQUIST,
Assistant United States Attorney,
Chief, Tax Division,
Attorneys for Defendants.

Dated: NOVEMBER 13, 1972.

In the United States District Court for the Northern District of California

(No. C–72–1157–WTS)

THE CALIFORNIA BANKERS ASSOCIATION, PLAINTIFF

v.

JOHN B. CONNALLY, JR., SECRETARY OF THE TREASURY OF THE UNITED STATES; GEORGE P. SHULTZ, SECRETARY-DESIGNATE OF THE TREASURY; WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY; MYLES J. AMBROSE, COMMISSIONER OF CUSTOMS; JOHNNIE M. WALTERS, COMMISSIONER OF THE INTERNAL REVENUE SERVICE; HERMAN NICKERSON, JR., ADMINISTRATOR OF THE NATIONAL CREDIT UNION; THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM; THE FEDERAL HOME LOAN BANK BOARD; THE FEDERAL DEPOSIT INSURANCE CORPORATION; AND THE SECURITIES AND EXCHANGE COMMISSION, DEFENDANTS

JAMES L. BROWNING, JR.,
United States Attorney.
JOHN M. YOUNGQUIST,
Assistant United States Attorney,
Chief, Tax Division,
San Francisco, California 94102.
Attorneys for Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM ORDER GRANTING IN PART PRELIMINARY INJUNCTION

NOTICE IS HEREBY GIVEN that all defendants above named hereby appeal to the Supreme Court of the United States from that portion of the Order Grant-

ing In Part Preliminary Injunction filed in this action on October 18, 1972, which holds under clause (2) thereof, an Act of Congress (to wit: Public Law 91–508, 84 Stat. 1114) to be unconstitutional in part, said order being an interlocutory order granting an interlocutory injunction restraining the enforcement of said Act in part.

This appeal is taken and this notice is filed pursuant to 28 U.S.C. §§ 1252, 1253, 2101(a), and 2282, and Rules 10 and 11 of the Rules of the Supreme Court of the United States.

Please Take Further Notice that a previous notice of appeal in this action was filed by defendants on October 6, 1972, from that portion of the decision of the three-judge Court filed herein on September 11, 1972, which could be construed as an appealable interlocutory order. The order of October 18, 1972, granting in part preliminary injunction, may now be construed as the appealable order issuing from said decision and may accordingly moot the notice of appeal filed October 6, 1972. Therefore, the instant notice of appeal is filed by defendants.

JAMES L. BROWNING, JR.,
United States Attorney

By

JOHN M. YOUNGQUIST,
Assistant United States Attorney,
Chief, Tax Division,
Attorneys for Defendants.

Dated: NOVEMBER 13, 1972.

APPENDIX B

Act of October 26, 1970, P.L. 91-508, 84 Stat. 1114:

TITLE I—FINANCIAL RECORDKEEPING

Chapter	Sec.
1. Insured Banks and Insured Institutions	101
2. Other Financial Institutions	121

Chapter 1.—INSURED BANKS AND INSURED INSTITUTIONS

Sec.
101. Retention of records by insured banks.
102. Retention of records by insured institutions.

§ 101. Retention of records by insured banks

The Federal Deposit Insurance Act is amended (1) by redesignating sections 21 and 22 as 22 and 23, respectively, and (2) by inserting the following new section immediately after section 20:

"SEC. 21. (a)(1) The Congress finds that adequate records maintained by insured banks have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that microfilm or other reproductions and other records made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

"(2) It is the purpose of this section to require the maintenance of appropriate types of records by insured banks in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

"(b) Where the Secretary of the Treasury (re-

ferred to in this section as the 'Secretary') determines that the maintenance of appropriate types of records and other evidence by insured banks has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

"(c) Each insured bank shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the bank and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

"(d) Each insured bank shall make, to the extent that the regulations of the Secretary so require—

"(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

"(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the bank has already made a record of the party's identity pursuant to subsection (c).

"(e) Whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured bank which is required to be reported or recorded under the Currency and Foreign Transac-

tions Reporting Act, the bank shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.

"(f) In addition to or in lieu of the records and evidence otherwise referred to in this section, each insured bank shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

"(g) Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

"(h) The Secretary shall include in his annual report to the Congress information on his implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law."

§ 102. Retention of records by insured institutions

Title IV of the National Housing Act is amended by adding at the end thereof the following new section:

"SEC. 411. The Secretary of the Treasury shall prescribe such regulations as may be appropriate to carry out, with respect to insured institutions, the purposes set forth in section 21 of the Federal Deposit Insurance Act with respect to insured banks."

Chapter 2.—OTHER FINANCIAL INSTITUTIONS

Sec.

121. Congressional findings and purpose.
122. Authority of Secretary with respect to reports on ownership and control.
123. Authority of Secretary with respect to recordkeeping and procedures.
124. Injunctions.
125. Civil penalties.
126. Criminal penalty.
127. Additional criminal penalty in certain cases.
128. Compliance.
129. Administrative procedure.

§ 121. Congressional findings and purpose

(a) The Congress finds that certain records maintained by businesses engaged in the functions described in section 123(b) of this Act have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that the power to require reports of changes in the ownership, control, and managements of types of financial institutions referred to in section 122 of this Act may be necessary for the same purpose.

(b) It is the purpose of this chapter to require the maintenance of appropriate types of records and the making of appropriate reports by such businesses in the United States where such records or reports have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 122. Authority of Secretary with respect to reports on ownership and control

Where the Secretary determines that the making of appropriate reports by uninsured banks or uninsured institutions of any type with respect to their ownership, control, and managements and any changes

therein has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such banks or institutions to make such reports as he determines in respect of such ownership, control, and managements and changes therein.

§ 123. Authority of Secretary with respect to record-keeping and procedures

(a) Where the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b) of this section, has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such bank, institution, or person—

(1) to require, retain, or maintain, with respect to its functions as an uninsured bank or uninsured institution or its functions referred to in subsection (b), any records or evidence of any type which the Secretary is authorized under section 21 of the Federal Deposit Insurance Act to require insured banks to require, retain, or maintain; and

(2) to maintain procedures to assure compliance with requirements imposed under this chapter. For the purposes of any civil or criminal penalty, a separate violation of any requirement under this paragraph occurs with respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

(b) The authority of the Secretary under this section extends to any person engaging in the business of carrying on any of the following functions:

(1) Issuing or redeeming checks, money orders, travelers' checks, or similar instruments, except as an incident to the conduct of its own nonfinancial business.

(2) Transferring funds or credits domestically or internationally.

(3) Operating a currency exchange or otherwise dealing in foreign currencies or credits.

(4) Operating a credit card system.

(5) Performing such similar, related, or substitute functions for any of the foregoing or for banking as may be specified by the Secretary in regulations.

§ 124. Injunctions

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation under this chapter, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with any regulation of the Secretary under this chapter.

§ 125. Civil penalties

(a) For each willfull violation of any regulation under this chapter, the Secretary may assess upon any person to which the regulation applies, and, if such person is a partnership, corporation, or other entity, upon any partner, director, officer, or employee thereof

who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

§ 126. Criminal penalty

Whoever willfully violates any regulation under this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 127. Additional criminal penalty in certain cases

Whoever willfully violates any regulation under this chapter, section 21 of the Federal Deposit Insurance Act, or section 411 of the National Housing Act, where the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than one year, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 128. Compliance

The Secretary shall have the responsibility to assure compliance with the requirements of this title and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency.

§ 129. Administrative procedure

The administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code shall apply to all proceedings under this chapter, section 21 of the Federal Deposit Insurance Act, and section 411 of the National Housing Act.

TITLE II—REPORTS OF CURRENCY AND FOREIGN TRANSACTIONS

Chapter	Sec.
1. General Provisions	201
2. Domestic Currency Transactions	221
3. Reports of Exports and Imports of Monetary Instruments	231
4. Foreign Transactions	241

Chapter 1.—GENERAL PROVISIONS

Sec.
201. Short title.
202. Purpose.
203. Definitions and rules of construction.
204. Regulations.
205. Compliance.
206. Exemptions.
207. Civil penalty.
208. Injunctions.
209. Criminal penalty.
210. Additional criminal penalty in certain cases.
211. Immunity of witnesses.
212. Availability of information to other Federal agencies.
213. Administrative procedure.

§ 201. Short title

This title may be cited as the "Currency and Foreign Transactions Reporting Act".

§ 202. Purpose

It is the purpose of this title to require certain reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 203. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section apply for the purposes of this title.

(b) The term "Secretary" means the Secretary of the Treasury.

(c) The term "person" includes natural persons, partnerships, trusts, estates, associations, corporations, and all entities cognizable as legal personalities. The term also includes any governmental department or agency specified by the Secretary either for the purpose of this title generally or any particular requirement thereunder.

(d) The term "United States", used in a geographical sense, includes the States and the District of Columbia, and to the extent the Secretary shall by regulation specify, either for the purposes of this title generally or any particular requirement thereunder, the Commonwealth of Puerto Rico, the possessions of the United States, United States military establishments, and United States diplomatic establishments.

(e) The term "financial institution" means any person which does business in any one or more of the following capacities:

(1) an insured bank as defined in section 3 of the Federal Deposit Insurance Act;

(2) a commercial bank or trust company;

(3) a private banker;

(4) an agency or a branch within the United States of any foreign bank;

(5) an insured institution as defined in section 401 of the National Housing Act;

(6) a savings bank, building and loan association, credit union, industrial bank, or other thrift institution;

(7) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934;

(8) a broker or dealer in securities or commodities;

(9) an investment banker or investment company;

(10) a currency exchange;

(11) an issuer, redeemer or cashier of travelers' checks, checks, money orders, or similar instruments;

(12) an operator of a credit card system;

(13) an insurance company;

(14) a dealer in precious metals, stones, or jewels;

(15) a pawnbroker;

(16) a loan or finance company;

(17) a travel agency;

(18) a licensed transmitter of funds;

(19) a telegraph company;

(20) a Federal, State, or local government institution which performs any of the functions of any of the businesses listed above; or

(21) any other type of business or institution performing similar, related, or substitute functions specified by the Secretary by regulation for the purposes of the provision of this title to which the regulation relates.

(f) The term "domestic", used with reference to institutions or agencies, limits the applicability of the provision wherein it appears to the performance by such institutions or agencies of functions within the United States.

(g) The term "financial agency" means any person which acts in the capacity of a financial institution or in the capacity of a bailee, depository trustee, agent, or in any other similar capacity with respect to money, credit, securities, or gold or transactions therein, on behalf of any person other than a government, a monetary or financial authority when acting as such, or an international financial institution of which the United States is a member.

(h) The term "foreign", used with reference to

institutions or agencies, limits the applicability of the provision wherein it appears to the performance by such institutions or agencies of functions outside the United States.

(i) References to this title or any provision thereof include regulations issued under this title or the provision thereof in question.

(j) All reports required under this title and all records of any such reports are specifically exempted from disclosure under section 552 of title 5, United States Code.

(k) For the purposes of section 1001 of title 18, United States Code, the contents of reports required under any provision of this title are statements and representations in matters within the jurisdiction of an agency of the United States.

(l) The term "monetary instruments" means coin and currency of the United States, and in addition, such foreign coin and currencies, and such types of travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, and stock with title passing upon delivery, or the equivalent thereof, as the Secretary may by regulation specify for the purposes of the provision of this title to which the regulation relates.

§ 204. Regulations

The Secretary shall prescribe such regulations as he may deem appropriate to carry out the purposes of this title.

§ 205. Compliance

(a) The Secretary shall have the responsibility to assure compliance with the requirements of this title and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency.

(b) The Secretary may by regulation require any class of domestic financial institutions to maintain such procedures as he may deem appropriate to assure compliance with the provisions of this title. For the purposes of both civil and criminal penalties for violations of this section, a separate violation shall be deemed to occur with respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

§ 206. Exemptions

The Secretary may make such exemptions from any requirement otherwise imposed under this title as he may deem appropriate. Any such exemption may be conditional or unconditional, by regulation, order, or licensing, or any combination thereof, and may relate to any particular transaction, to the type or amount of the transaction, to the party or parties or the classification of parties, or to any combination thereof. The Secretary may in his discretion, in any manner giving actual or constructive notice to the parties affected, revoke any exemption made under this section. Any such revocation shall remain in effect pending any judicial review.

§ 207. Civil penalty

(a) For each willful violation of this title, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) In the event of the failure of any person to pay any penalty assessed under this title, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

§ 208. Injunctions

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of the provisions of this title, or of any order thereunder, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with the provisions of this title or any order of the Secretary made in pursuance thereof.

§ 209. Criminal penalty

Whoever willfully violates any provision of this title or any regulation under this title shall be fined not more than $1,000, or imprisoned not more than one year, or both.

§ 210. Additional criminal penalty in certain cases

Whoever willfully violates any provision of this title where the violation is—

(1) committed in furtherance of the commission of any other violation of Federal law, or

(2) committed as part of a pattern of illegal activity involving transactions exceeding $100,000 in any twelve-month period,

shall be fined not more than $500,000 or imprisoned not more than five years, or both.

§ 211. Immunity of witnesses

Whenever a witness refuses on the basis of his privilege against self-incrimination, to testify or provide

other information in a proceeding involving any violation of this title before or ancillary to—

(1) a court or grand jury of the United States,

(2) an agency of the United States, or

(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order requiring him to give testimony or provide other information, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. No such testimony or other information so compelled under the order or evidence or other information which is obtained by the exploitation of such testimony may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 212. Availability of information to other Federal agencies

The Secretary shall, upon such conditions and pursuant to such procedures as he may by regulation prescribe, make any information set forth in reports filed pursuant to this title available for a purpose consistent with the provisions of this title to any other department or agency of the Federal Government on the request of the head of such department or agency.

§ 213. Administrative procedure

Subject to section 203(j), the administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of title 4. United States Code, shall apply to all proceedings under this title.

Chapter 2.—DOMESTIC CURRENCY TRANSACTIONS

Sec.
221. Reports of currency transactions required.
222. Persons required to file reports.
223. Reporting procedure.

§ 221. Reports of currency transactions required

Transactions involving any domestic financial institution shall be reported to the Secretary at such time, in such manner, and in such detail as the Secretary may require if they involve the payment, receipt, or transfer of United States currency, or such other monetary instruments as the Secretary may specify, in such amounts, denominations, or both, or under such circumstances, as the Secretary shall by regulation prescribe.

§ 222. Persons required to file reports

The report of any transaction required to be reported under this chapter shall be signed or otherwise made both by the domestic financial institution involved and by one or more of the other parties thereto or participants therein, as the Secretary may require. If any party to or participant in the transaction is not an individual acting only for himself, the report shall identify the person or persons on whose behalf the transaction is entered into, and shall be made by the individuals acting as agents or bailees with respect thereto.

§ 223. Reporting procedure

(a) The Secretary may in his discretion designate domestic financial institutions, individually or by class, as agents of the United States to receive reports required under this chapter, except that an institution

which is not insured, chartered, examined, or registered as such by any agency of the United States may not be so designated without its consent. The Secretary may suspend or revoke any such designation for any violation of this Act, or section 21 of the Federal Deposit Insurance Act, or section 411 of the National Housing Act.

(b) Any person (other than an institution designated under subsection (a)) required to file a report under this chapter with respect to a transaction with a domestic financial institution shall file the report with that institution, except htat (1) if the institution is not designated under subsection (a), the report shall be filed as the Secretary shall prescribe, and (2) any such person may, at his election and in lieu of filing the report in the manner hereinabove prescribed, file the report with the Secretary. Domestic financial institutions designated under subsection (a) shall transmit reports filed with them, and shall file their own reports, as the Secretary shall prescribe.

Chapter 3.—REPORTS OF EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS

Sec.
231. Reports required.
232. Forfeiture.
233. Civil liability.
234. Remission by the Secretary.
235. Enforcement authority.

§ 231. Reports required

(a) Except as provided in subsection (c) of this section, whoever, whether as principal, agent, or bailee, or by an agent or bailee, knowingly—

(1) transports or causes to be transported monetary instruments—

(A) from any place within the United States to or through any place outside the United States, or

(B) to any place within the United States from or through any place outside the United States, or

(2) receives monetary instruments at the termination of their transportation to the United States from or through any place outside the United States

in an amount exceeding $5,000 on any one occasion shall file a report or reports in accordance with subsection (b) of this section.

(b) Reports required under this section shall be filed at such times and places, and may contain such of the following information and any additional information, in such form and in such detail, as the Secretary may require:

(1) The legal capacity in which the person filing the report is acting with respect to the monetary instruments transported.

(2) The origin, destination, and route of the transportation.

(3) Where the monetary instruments are not legally and beneficially owned by the person transporting the same, or are transported for any purpose other than the use in his own behalf of the person transporting the same, the identities of the person from whom the monetary instruments are received, or to whom they are to be delivered, or both.

(4) The amounts and types of monetary instruments transported.

(c) Subsection (a) does not apply to any common carrier of passengers in respect of monetary instruments in the possession of its passengers, nor to any

common carrier of goods in respect of shipments of monetary instruments not declared to be such by the shipper.

§ 232. Forfeiture

(a) Any monetary instruments which are in the process of any transportation with respect to which any report required to be filed under section 231(1) either has not been filed or contains material omissions or misstatements are subject to seizure and forfeiture to the United States.

(b) For the purpose of this section, monetary instruments transported by mail, by any common carrier, or by any messenger or bailee, are in process of transportation from the time they are delivered into the possession of the postal service, common carrier, messenger, or bailee until the time they are delivered into or retained in the possession of the addressee or intended recipient or any agent of the addressee or intended recipient for purposes other than further transportation within, or across any border of, the United States.

§ 233. Civil liability

The Secretary may assess a civil penalty upon any person who fails to file any report required under section 231, or who files such a report containing any material omission or misstatement. The amount of the penalty shall not exceed the amount of the monetary instruments with respect to whose transportation the report was required to be filed. The liabilities imposed by this chapter are in addition to any other liabilities, civil or criminal, except that the liabilty under this section shall be reduced by any amount actually forfeited under section 232.

§ 234. Remission by the Secretary

The Secretary may in his discretion remit any forfeiture or penalty under this chapter in whole or in part upon such terms and conditions as he deems reasonable and just.

§ 235. Enforcement authority

(a) If the Secretary has reason to believe that moneary instruments are in the process of transportation and with respect to which a report required under section 231 has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more designated or described places or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles.

Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(b) This section is not in derogation of the authority of the Secretary under any other law.

Sec.
241. Records and reports required.
242. Classifications and requirements.

Chapter 4.—FOREIGN TRANSACTIONS

§ 241. Records and reports required

(a) The Secretary of the Treasury, having due regard for the need to avoid impeding or controlling the export or import of currency or other monetary

instruments and having due regard also for the need to avoid burdening unreasonably persons who legitimately engage in transactions with foreign financial agencies, shall by regulation require any resident or citizen of the United States, or person in the United States and doing business therein, who engages in any transaction or maintains any relationship, directly or indirectly, on behalf of himself or another, with a foreign financial agency to maintain records or to file reports, or both, setting forth such of the following information, in such form and in such detail, as the Secretary may require:

(1) The identities and addresses of the parties to the transaction or relationship.

(2) The legal capacities in which the parties to the transaction or relationship are acting, and the identities of the real parties in interest if one or more of the parties are not acting solely as principals.

(3) A description of the transaction or relationship including the amounts of money, credit, or other property involved.

(b) No person required to maintain records under this section shall be required to produce or otherwise disclose the contents of the records except in compliance with a subpena or summons duly authorized and issued or as may otherwise be required by law.

§ 242. Classifications and requirements

The Secretary may prescribe:

(1) Any reasonable classification of persons subject to or exempt from any requirement imposed under section 241.

(2) The foreign country or countries as to which any requirement imposed under section 241 applies or does not apply if, in the judgment of

the Secretary, uniform applicability of any such requirement to all foreign countries is unnecessary or undesirable.

(3) The magnitude of transactions subject to any requirement imposed under section 241.

(4) Types of transactions subject to or exempt from any requirement imposed under section 241.

(5) Such other matters as he may deem necessary to the application of this chapter.

* * * * *

Trading with the Enemy Act, c. 106, 40 Stat. 411:

SEC. 5. * * *

* * * * *

(b) [as amended by Sec. 2, Act of March 9, 1933, c. 1, 48 Stat. 1, and Sec. 301, First War Powers Act, 1941, c. 593, 55 Stat. 838] (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transaction in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving any property in

which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof * * *: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision for any or all of the terms used in this subdivision. Whoever willfully violates any of the provisions of this subdivision or any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation. [12 U.S.C. (1940 ed., Supp. V) 95a.]

Treasury Regulations on Financial Recordkeeping and Reporting of Currency and Foreign Transactions (31 C.F.R.):

SUBPART A—DEFINITIONS

§ 103.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

Bank. (a) Each agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commercial bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the laws of any State or of the United States; and

(7) Any other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State.

(b) Each agent, agency, branch or office within the United States of a foreign bank.

Broker or dealer in securities. A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Currency. The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. It includes U.S. silver certificates, U.S. notes and Federal Reserve notes, but does not include bank checks or other negotiable instruments not customarily accepted as money.

Domestic. When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

Financial institution. Each agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A bank;

(2) A broker or dealer in securities;

(3) A person who engages as a business in dealing in or exchanging currency as, for example, a dealer in foreign exchange or a person engaged primarily in the cashing of checks;

(4) A person who engages as a business in the issuing, selling or redeeming of travelers' checks, money orders, or similar instruments, except one who does so as a selling agent exclusively or as an incidental part of another business;

(5) An operator of a credit card system which issues, or authorizes the issuance of, credit cards that may be used for the acquisition of monetary instruments, goods, or services outside the United States.

(6) A licensed transmitter of funds, or other person engaged in the business of transmitting funds abroad for others.

Foreign bank. A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include

an agent, agency, branch or office within the United States of a bank organized under foreign law.

Investment security. An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

Monetary instruments. Coin or currency of the United States or of any other country, travelers' checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or otherwise in such form that title thereto passes upon delivery. The term does not include bank checks made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements.

Person. An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

Secretary. The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

Transaction in currency. A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds

by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part.

United States. The various States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Subpart B—Reports Required To Be Made

§ 103.21 Determination by the Secretary.

The Secretary hereby determines that the reports required by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 103.22 Reports of currency transactions.

(a) Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than $10,000.[1]

(b) Except as otherwise directed in writing by the Secretary, this section shall not (1) require reports of transactions with Federal Reserve Banks or Federal Home Loan Banks; (2) require reports of transactions solely with, or originated by, financial institutions or foreign banks; or (3) require a bank to report transactions with an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned. A report listing such customers who engage in transactions which are not reported

[1] Forms filed as part of the original document.

because of the exemption contained in this paragraph shall be made to the Secretary upon demand therefor made by him.

§ 103.23 Reports of transportation of currency or monetary instruments.

(a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding $5,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof.[1] A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures or requests it to be done by a financial institution or any other person. A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section.

(b) Each person who receives in the United States currency or other monetary instruments in an aggregate amount exceeding $5,000 on any one occasion which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under paragraph (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.

(c) This section shall not require reports by (1) a Federal Reserve Bank, (2) a bank, a foreign bank, or a broker or dealer in securities, in respect to currency

[1] Forms filed as part of the original document.

or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (4) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers, (5) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (6) a travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, nor by (7) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign banks.

(d) This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by paragraph (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

§ 103.24 Reports of foreign financial accounts.

Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other finan-

cial account in a foreign country shall report such relationship as required on his Federal income tax return for each year in which such relationship exists, and shall provide such information concerning each such account as shall be specified in a special tax form to be filed by such persons.

§ 103.25 Filing of reports.

(a) Reports required to be filed by the first paragraph of § 103.22 shall be filed on or before the 45th day following that on which the reported transactions occur. They shall be filed with the Commissioner of Internal Revenue on forms to be prescribed by him, with the approval of the Secretary. All information called for in such forms shall be furnished.

(b) Reports required to be filed by § 103.23(a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States, unless otherwise directed or permitted by the Commissioner of Customs. They shall be filed with the Customs officer in charge at any Customs port of entry or departure, or as otherwise permitted or directed by the Commissioner of Customs. If the currency or other monetary instruments with respect to which a report is required do not accompany a person entering or departing from the United States, such reports may be filed by mail on or before the date of entry, departure, mailing or shipping, with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20226. They shall be on forms to be prescribed by the Secretary and all information called for in such forms shall be furnished.

(c) Reports required to be filed by § 103.23(b) shall be filed with the Commissioner of Customs within 30 days after receipt of the currency or other monetary instruments. They may be filed with the Customs

officer in charge at any port of entry or departure, or by mail addressed to the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20226. They shall be on forms to be prescribed by the Secretary and all information called for in such forms shall be furnished.

(d) Forms to be used in making the reports required by §§ 103.22 and 103.23 may be obtained from any Internal Revenue office; in addition, forms to be used in making the reports required by § 103.23 may be obtained from any office of the Bureau of Customs.

§ 103.26 Identification required.

Before effecting any transaction with respect to which a report is required under the first paragraph of § 103.22, a financial institution shall verify and record the identity, and record the account number on its books or the social security or taxpayer identification number, if any, of a person with whom or for whose account such transaction is to be effected. Verification of identity for a customer of the financial institution depositing or withdrawing funds may be by reference to his account or other number on the books of the institution. Verification of identity in any other case may be by examination, for example, of a driver's license, passport, alien identification card, or other appropriate document normally acceptable as a means of identification.

SUBPART C—RECORDS REQUIRED TO BE MAINTAINED

§ 103.31 Determination by the Secretary.

The Secretary hereby determines that the records required to be kept by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 103.32 Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 103.24 to be reported on a Federal income tax return shall be retained by each person having a financial interest in any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

§ 103.33 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of $5,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received regarding a transaction which results in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account, or place outside the United States;

(c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

§ 103.34 Additional records to be made and retained by banks.

(a) With respect to each deposit or share account opened with a bank after June 30, 1972, by a person residing or doing business in the United States or a citizen of the United States, such bank shall secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more individuals, such bank shall secure and maintain a record of the social security number of an individual having a financial interest in that acount.

(b) Each bank shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account;

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn

on the bank or issued and payable by it, except those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are (i) dividend checks, (ii) payroll checks, (iii) employee benefit checks, (iv) insurance claim checks, (v) medical benefit checks, (vi) checks drawn on governmental agency accounts, (vii) checks drawn by brokers or dealers in securities, (viii) checks drawn on fiduciary accounts, (ix) checks drawn on other financial institutions, or (x) pension or annuity checks;

(4) Each item other than bank charges or periodic charges made pursuant to agreement with the customer, comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under subparagraph (3) of this paragraph;

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank, purchased, received for credit or collection, or otherwise acquired by the bank;

(8) Each item, including checks, drafts or transfers of credit, of more than $10,000 received directly and not through a domestic financial institution, by letter,

cable or any other means, from a person, account or place outside the United States;

(9) A record of each receipt of currency, other monetary instruments, checks, or investment securities, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a person, account or place outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a demand deposit account and to trace a check deposited in such account through its domestic processing system or to supply a description of a deposited check. This subparagraph shall be applicable only with respect to demand deposits.

§ 103.35 Additional records to be made and retained by brokers and dealers in securities.

(a) With respect to each brokerage account opened with a broker or dealer in securities after June 30, 1972, by a person residing or doing business in the United States or a citizen of the United States, such broker or dealer shall secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more individuals, such broker or dealer shall secure and maintain a record of the social security number of an individual having a financial interest in that account.

(b) Every broker or dealer in securities shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature or trading authority over each customer's account;

(2) Each record described in § 240.17a–3(a) (1), (2), (3), (5), (6), (7), (8), and (9) of Title 17, Code of Federal Regulations;

(3) A record of each remittance or transfer of funds, or of currency, checks, other monetary instruments, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(4) A record of each receipt of currency, other monetary instruments, checks, or investment securities and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States.

§ 103.36 Nature of records and retention period.

(a) Wherever it is required that there be retained either the original of a microfilm or other copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains only standardized printed information, a copy of which is on file.

(b) Records required by this subpart to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this subpart, then such a record shall be prepared in writing by the financial institution.

(c) Records which are required by § 103.34(b)(10) to be retained by banks shall be retained for a period

of 2 years. All other records which are required by this subpart to be retained by financial institutions shall be retained for a period of 5 years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

§ 103.37 Person outside the United States.

For the purposes of this subpart, a remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit to the domestic account of a person whose address is known by the person making the remittance or transfer, to be outside the United States, shall be deemed to be a remittance or transfer to a person outside the United States, except that, unless otherwise directed by the Secretary, this section shall not apply to a transaction on the books of a domestic financial institution involving the account of a customer of such institution whose address is within approximately 50 miles of the location of the institution, or who is known to be temporarily outside the United States.

SUBPART D—GENERAL PROVISIONS

§ 103.41 Dollars as including foreign currency.

Wherever in this part an amount is stated in dollars, it shall be deemed to mean also the equivalent amount in any foreign currency.

§ 103.42 Photographic or other reproductions of Government obligations.

Nothing herein contained shall require or authorize the microfilming or other reproduction of

(a) Currency or other obligation or security of the United States as defined in 18 U.S.C. 8, or

(b) Any obligation or other security of any foreign government,

the reproduction of which is prohibited by law.

§ 103.43 Availability of information.

The Secretary may make any information set forth in any reports received pursuant to this part available to any other department or agency of the United States upon the request of the head of such department or agency, made in writing and stating the particular information desired, the criminal, tax, or regulatory investigation or proceeding in connection with which the information is sought, and the official need therefor.

§ 103.44 Disclosure.

All reports required under this part and all records of such reports are specifically exempted from disclosure under section 552 of title 5, United States Code.

§103.45 Exceptions, exemptions, modifications, and reports.

(a) The Secretary, in his sole discretion may by written order or authorization make exceptions to, grant exemptions from, impose additional recordkeeping or reporting requirements authorized by statute, or otherwise modify, the requirements of this part. Such exceptions, exemptions, requirements or modifications may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly stated in the order or authorization, and they shall be revocable in the sole discretion of the Secretary.

(b) The Secretary shall have authority to further define all terms used herein.

§ 103.46 Enforcement.

(a) Responsibility for assuring compliance with the requirements of this part is delegated as follows:

(1) To the Comptroller of the Currency, with respect to national banks and banks in the District of Columbia;

(2) To the Board of Governors of the Federal Reserve System, with respect to State bank members of the Federal Reserve System;

(3) To the Federal Home Loan Bank Board, with respect to insured building and loan associations, insured savings and loan associations, and insured institutions as defined in section 401 of the National Housing Act;

(4) To the Administrator of the National Credit Union Administration, with respect to Federal credit unions;

(5) To the Federal Deposit Insurance Corporation, with respect to all other banks except agents of foreign banks which agents are not supervised by State or Federal bank supervisory authorities;

(6) To the Securities and Exchange Commission, with respect to brokers and dealers in securities;

(7) To the Commissioner of Customs with respect to §§ 103.23 and 103.48;

(8) To the Commissioner of Internal Revenue except as otherwise specified in this section.

(b) Overall responsibility for coordinating the procedures and efforts of the agencies listed herein and assuring compliance with this part is delegated to the Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations). Periodic reports shall be made by each such agency to the Assistant Secretary, with copies to the General Counsel of the Treasury Department and to the Commissioner of Internal Revenue.

§ 103.47 Civil penalty.

(a) For any willful violation of any requirement of this part, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer or employee thereof who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) For any failure to file a report required under § 103.23 or for filing such a report containing any material omission or misstatement, the Secretary may assess a civil penalty up to the amount of the currency or monetary instruments transported, mailed or shipped, less any amount forfeited under § 103.48.

§ 103.48 Forfeiture of currency or monetary instruments.

Any currency or other monetary instruments which are in the process of any transportation with respect to which a report is required under § 103.23 are subject to seizure and forfeiture to the United States if such report has not been filed as required in § 103.25, or contains material omissions or misstatements. The Secretary may, in his sole discretion, remit or mitigate any such forfeiture in whole or in part upon such terms and conditions as he deems reasonable.

§ 103.49 Criminal penalty.

(a) Any person who willfully violates any provision of this part may, upon conviction thereof, be fined not more than $1,000 or be imprisoned not more than 1 year, or both. Such person may in addition, if the violation is of any provision authorized by title I of Public Law 91–508 and if the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than 1 year, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

(b) Any person who willfully violates any provision of title II of Public Law 91–508, or of this part authorized thereby, where the violation is either

(1) Committed in furtherance of the commission of any other violation of Federal law, or

(2) Committed as part of a pattern of illegal activity involving transactions exceeding $100,000 in any 12-month period, may, upon conviction thereof, be fined not more than $500,000 or be imprisoned not more than 5 years, or both.

(c) Any person who knowingly makes any false, fictitious or fraudulent statement or representation in any report required by this part may, upon conviction thereof, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

§ 103.50 Enforcement authority with respect to transportation of currency or monetary instruments.

(a) If the Secretary has reason to believe that currency or monetary instruments are in the process of transportation and with respect to which a report required under § 103.23 has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more designated or described places or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles. Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(b) This section is not in derogation of the authority of the Secretary under any other law or regulation.

Effective date. This part shall become effective July 1, 1972.

APPENDIX C

TITLE 31—MONEY AND FINANCE: TREASURY

CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

Financial Reporting and Recordkeeping

On October 28, 1972, a notice of proposed rule making containing proposed amendments to various provisions of this Part was published in the Federal Register (37 F.R. 23114 (1972)). In accordance with the notice, interested persons were afforded an opportunity to submit written comments. After consideration of all such relevant matters as were presented by interested parties regarding the rules proposed, the following amendments are hereby adopted effective January 17, 1973.

SAMUEL R. PIERCE, JR.,
General Counsel.
EUGENE T. ROSSIDES,
Assistant Secretary.

[PREAMBLE]

The key provisions of the proposal were essentially as follows:

1. Eliminate the requirement that banks keep microfilm copies of checks drawn for $100 or less.

2. Require that information made available to other departments or agencies under this part shall be received in confidence and not disclosed except for official purposes.

3. State specifically that these regulations do not authorize the Secretary or any other person to inspect or review financial records maintained under this part.

4. Eliminate operators of credit card systems from the definition of a financial institution subject to this part.

5. Delete a phrase which allows the Secretary by written order or authorization to impose additional recordkeeping or reporting requirements.

After careful consideration of the comments received, it has been decided to exempt checks of $100 or less from the copying requirement.

With regard to disclosure of information, the proposed change is intended to ensure that information resulting from the recordkeeping and reporting requirements will be made available to other departments or agencies of the United States solely for the purposes intended. Various comments suggested that the proposed language did not go far enough, and that the change should forbid disclosure to any other department or agency. Such a restriction would mean that cases involving information obtained from this Department could not be referred to the Department of Justice for prosecution until the Secretary gave his approval. This would simply cause further delay without serving any worthwhile purpose. Every federal department or agency has sanctions against the unauthorized disclosure of official information, and those sanctions have proved effective. Accordingly, the proposed language has been adopted unchanged.

Certain of the comments on the proposed regulation dealing with access to records maintained under this part suggested that the proposal is inadequate to protect the rights of bank customers, however, the

proposal is intended merely to point out that these regulations do not authorize access to customer records, but that access to such records is governed by other applicable law. The supervisory agencies which have been given responsibility for assuring compliance with the regulations may, of course, have access to these records as necessary to assure that they are being kept as required.

The proposal to eliminate operators of credit card systems from the definition of a financial institution for purposes of this part met with general approval, except that some doubt arose as to its effect upon the operation of bank credit card systems. Since it was agreed that all credit card operators, including banks, should be removed from the scope of the regulations, the definition of a financial institution has been amended to exclude bank credit card systems, as well as operators of credit card systems, from the definition.

Comments on the proposed deletion of the phrase which allows the Secretary by written order or authorization to impose additional recordkeeping or reporting requirements were favorable to the proposal; however, one comment suggested that the phrase "or otherwise modify" the requirements of this part also should be deleted. This suggestion is consistent with the intent of the proposed amendment, and it has been adopted.

Part 103 of Title 31 of the Code of Federal Regulations is amended as follows:

1. Subpart A is amended by deleting from § 103.11 subparagraph (5) of the definition of a financial institution, renumbering the following subparagraphs so that the definition of financial institutions will read as follows:

§ 103.11 Meaning of terms.

* * * * *

Financial institution. Each agency, branch, or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A person who engages as a business in dealing in or exchanging currency as, for example, a dealer in foreign exchange or a person engaged primarily in the cashing of checks;

(4) A person who engages as a business in the issuing, selling, or redeeming of travelers' checks, money orders, or similar instruments, except one who does so as a selling agent exclusively or as an incidental part of another business;

(5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds abroad for others.

* * * * *

2. Subpart C is amended by amending § 103.34 to read as follows:

§ 103.34 Additional records to be made and retained by banks.

(a)(1) With respect to each deposit or share account opened with a bank after June 30, 1972, by a person residing or doing business in the United States or by a citizen of the United States, such bank shall, within forty-five days from the date such an account is opened, secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more individuals, such bank shall secure and maintain a record of the social security number of an individual having a financial interest in that account. In the event that a bank has been unable to secure the identification

required herein with respect to an account within the 45-day period specified, it shall nevertheless not be deemed to be in violation of this section if (i) it has made a reasonable effort to secure such identification, and (ii) it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him.

(2) The 45-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the bank.

(3) A taxpayer identification number for a deposit or share account required under paragraph (a)(1) of this section need not be secured in the following instances: (i) accounts for public funds opened by agencies and instrumentalities of Federal, State, local or foreign governments, (ii) accounts for aliens who are (*a*) ambassadors, ministers, career diplomatic or consular officers, or (*b*) naval, military or other attachés of foreign embassies and legations, and for the members of their immediate families, (iii) accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29, 1945 (22 U.S.C. sec. 288), and for the members of their immediate families, (iv) aliens temporarily residing in the United States for a period not to exceed 180 days, (v) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted

by any agency of the Federal Government, (vi) unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter, (vii) interest bearing accounts maintained by a person under 18 years of age opened as part of a school thrift savings program, provided the annual interest does not exceed $10, and (viii) Christmas club, vacation club and similar installment savings programs provided the annual interest does not exceed $10. In instances described in paragraph (a) (3) (vii) and (viii) of this section, the bank shall, within fifteen days following the end of any calendar year in which the interest accrued in that year exceeds $10, use its best efforts to secure and maintain the appropriate taxpayer identification number or application form therefor.

(4) The rules and regulations issued by the Internal Revenue Service under Section 6109 of the Internal Revenue Code of 1954 shall determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(b) Each bank shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account;

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn for $100 or less or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are (i) dividend checks,

(ii) payroll checks, (iii) employee benefit checks, (iv) insurance claim checks, (v) medical benefit checks, (vi) checks drawn on government agency accounts, (vii) checks drawn by brokers or dealers in securities, (viii) checks drawn on fiduciary accounts, (ix) checks drawn on other financial institutions, or (x) pension or annuity checks;

(4) Each item in excess of $100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under paragraph (b)(3) of this section;

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank, purchased, received for credit or collection, or otherwise acquired by the bank;

(8) Each item, including checks, drafts or transfers of credit, of more than $10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States;

(9) A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not

through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a demand deposit account and to trace a check in excess of $100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of $100. This subparagraph shall be applicable only with respect to demand deposits.

§ 103.35 [Amended]

3. Subpart C is further amended by amending § 103.35 by deleting "paragraph (1)" in paragraph (a) (2), and substituting therefore the words "paragraph (a) (1) of this section"; and by deleting "subsection (1)" in paragraph (a) (3), and substituting therefor the words "paragraph (a) (1) of this section."

4. Subpart D is amended by amending § 103.43 to read as follows:

§ 103.43 Availability of information.

The Secretary may make any information set forth in any report received pursuant to this part available to any other department or agency of the United States upon the request of the head of such department or agency, made in writing and stating the particular information desired, the criminal, tax or regulatory investigation or proceeding in connection with which the information is sought and the official need therefor. Any information made available under this section to other departments or agencies of the United States shall be received by them in confidence, and shall not be disclosed to any person except for official purposes relating to the investigation or proceeding in connection with which the information is sought.

5. Subpart D is further amended by amending § 103.45 to read as follows:

§ 103.45 Exceptions, exemptions, and reports.

(a) The Secretary, in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of this part. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly stated in the order of authorization, and they shall be revocable in the sole discretion of the Secretary.

(b) The Secretary shall have authority to further define all terms used herein.

6. Subpart D is further amended by adding a new § 103.51 as follows:

§ 103.51 Access to records.

Except as provided in §§ 103.34(a)(1) and 103.35 (a)(1), and except for the purpose of assuring compliance with the recordkeeping and reporting requirements of this part, this part does not authorize the Secretary or any other person to inspect or review the records required to be maintained by subpart C of this part. Other inspection, review or access to such records is governed by other applicable law.

APPENDIX D

Form 4789 (Rev. 1977)
Department of the Treasury
Internal Revenue Service

Currency Transaction Report

File a separate report for each transaction
(Complete all applicable parts—see instructions)

Part I Identity of person who conducted this transaction with the financial institution

Name (Last, first and middle initial) | Social security number

Number and street | Business, occupation or profession

City or town, State and ZIP code

Part II Person or organization for whom this transaction was completed (Complete only if different than Part I)

Name | Identifying number

Number and street | Business, occupation or profession

City or town, State and ZIP code

Part III Description of transaction (If additional space is needed, attach a separate schedule)

1. Nature of transaction (check the applicable boxes)
   - ☐ Deposit
   - ☐ Withdrawal
   - ☐ Currency exchange
   - ☐ Check cashed
   - ☐ Check purchased
   - ☐ Traveler's checks purchased
   - ☐ Security purchase (specify) _____
   - ☐ Other (specify) _____

2. Total amount of currency transaction (in U.S. dollars) | 3. Amount in denominations of $100 or higher | 4. Date of transaction (Month, day and year)

5. If other than U.S. currency is involved, please furnish the following information:
   Currency name | Country | Total amount of foreign currency

6. If a check was involved in this transaction, please furnish the following information (See instructions):
   Date and amount of check | Payee
   Drawer of check | Drawee bank and City of location

Part IV Type of identification presented in this transaction

By customers:
- ☐ Savings account number _____
- ☐ Checking account number _____
- ☐ Share account number _____
- ☐ Loan account number _____
- ☐ Safety deposit box number _____
- ☐ Other (specify)

By others:
- ☐ Driver's permit — State — Number
- ☐ Passport — Country — Number
- ☐ Alien ID card — Country — Number
- ☐ Other (specify)

Part V Financial institution reporting the financial transaction

Name and address | Identifying number (see instructions)

Business activity

Sign here ▶ _____ Authorized signature | _____ Title | _____ Date

GENERAL INSTRUCTIONS

This report is required by Treasury Department regulations (31 Code of Federal Regulation 103).

Who Must File.—Beginning July 1, 1972, each financial institution (as described in these instructions) shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than $10,000.

Exceptions.—Financial institutions are not required to file Form 4789 for transactions:

(1) with Federal Reserve Banks or Federal Home Loan Banks;

(2) solely with, or originated by, financial institutions or foreign banks; or

(3) between a bank and established customers maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the customer's business, industry or profession.

However, upon request each bank shall submit a report listing those customers who engage in transactions which were not reported because of the exemption in (3).

When and Where to File.—This report shall be filed on or before the 45th day following the date of the transaction with the Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19155. Forms may be obtained from any Internal Revenue Service office.

Identifying Number.—Social security number or employer identification number if other than individual.

Identification Required.—Before any transaction is effected a financial institution shall verify and record the identity, and record the account number on its books or the social security or taxpayer identification number, if any, of a person with whom or for whose account such transaction is to be effected Verification of identity for a customer of the financial institution depositing or withdrawing funds may be by reference to his account or other number on the books of the institution. Verification of identity in any other case may be by examination, for example, of a driver's license, passport, alien identification card, or other appropriate document normally acceptable as a means of identification.

Penalties.—Civil and criminal penalties are provided for failure to file a report or to supply information, and for filing a false or fraudulent report. See sections 103.47 and 103.49 of the regulations.

SPECIFIC INSTRUCTIONS

Part I.—

(1) In the address block, enter the permanent address of the person conducting the transaction.

(2) In the social security block, enter the social security number of the person conducting the transaction. If the person has no number, write "None" in this block.

Part II.—

(1) In the name block, individuals should enter their last name, first name and middle initial, if any, in that order. All others should enter their complete organization name.

(2) In the identifying number block, enter the social security number or employer identification number.

Part III, line 6.—This part should be completed only where a check is cashed or a bank check is purchased with currency.

Part IV.—See instruction "Identification Required," above.

Part V.—Institutions may also enter in the name and address block other identifying information.

DEFINITIONS

Bank.—Each agent, agency, branch or office within the United States of a foreign bank and each agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) a commercial bank or trust company organized under the laws of any state or of the United States;

(2) a private bank;

(3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States;

(4) an insured institution as defined in section 401 of the National Housing Act;

(5) a savings bank, industrial bank or other thrift institution;

(6) a credit union organized under the laws of any state or of the United States; and

(7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Currency.—The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the

country in which issued. It includes United States silver certificates, United States notes and Federal Reserve notes, but does not include bank checks or other negotiable instruments not customarily accepted as money.

Financial Institution.—Each agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) a bank;

(2) a broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934;

(3) a person who engages as a business in dealing in or exchanging currency as, for example, a dealer in foreign exchange or a person engaged primarily in the cashing of checks;

(4) a person who engages as a business in the issuing, selling or redeeming of travelers' checks, money orders, or similar instruments, except one who does so as a selling agent exclusively, or as an incidental part of another business;

(5) an operator of a credit card system which issues, or authorizes the issuance of, credit cards that may be used for the acquisition of monetary instruments, goods, or services outside the United States;

(6) a licensed transmitter of funds, or other person engaged in the business of transmitting funds abroad for others.

Person.—An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

Transaction in Currency.—A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part.

APPENDIX E

TREASURY DEPARTMENT,
Washington, D.C.

(Release A. M. Newspapers, Monday, August 3, 1959)

The following letter signed by Secretary Anderson is being sent to banks and other financial institutions:

AUGUST 3, 1959.

To Banks and Other Financial Institutions:

Since 1945 the Treasury Department regulations have required every financial institution in the United States to file on Form TCR–1, Report of Currency Transactions, monthly reports of large and unusual currency transactions. This form has now been revised and simplified to permit easier preparation by financial institutions and increased usefulness to the Treasury Department's Internal Revenue Service. In addition, only one copy of the new smaller form is to be submitted instead of two copies as required heretofore. The supply of old forms should continue to be used until exhausted, but only one copy of each report should be filed.

In view of the fact that recently there has been a wide variance among financial institutions with respect to reporting large or unusual currency transactions, I would like to again emphasize how important full and careful reporting by banks is to the Internal Revenue Service. These reports were originally developed for the purpose of discovering large currency transactions resorted to by racketeers, dealers in narcotics, foreign agents, and others engaged in illegal activities as an attempted method of concealing income. Particularly, the reports have been of invaluable

assistance to the Internal Revenue Service in breaking some of the largest income tax evasion cases. For example, in fiscal years 1957 and 1956, the Revenue Service completed 129 fraud cases involving additional tax and penalties of approximately $13,500,000 which originated from information contained in Forms TCR–1 submitted by banks and other financial institutions.

The Internal Revenue Service has recently revised its procedure to provide for better utilization of the currency reports and tighter controls for their handling by its employees. Instructions were issued again cautioning Internal Revenue employees that the reporting of currency transactions by financial institutions should not be divulged to the customers of the reporting institutions.

At this time I would like also to call to your attention the importance of financial institutions requiring satisfactory identification. Instances have recently been brought to our attention in which individuals have engaged in large and unusual currency transactions and have furnished false or inadequate identification. Transactions of this nature can have far-reaching effects on the protection of the Federal revenue, and all banks and other financial institutions are requested to guard against those transactions where satisfactory identification is not furnished by persons or organizations (including any agents or couriers) engaged in currency transactions. Attention is invited to the Instructions Relating to Reports of Currency Transactions, which provide in part:

> Section 102.3 Identification required. No financial institutions shall effect any transaction with respect to which a report is required unless the person or organization with whom such transaction is to be effected has been satisfactorily identified.

A recent survey of the forms filed indicates that some financial institutions are not submitting reports when it appears obvious that the criteria for the submission of reports have been met; while, on the other hand, there are indications that some few reports are received of cash transactions which are ordinary, necessary, and commensurate with the customary financial requirements of the persons or organizations making the transactions. Therefore, I would like to urge all financial institutions to re-examine their methods of handling this program. There are attached a copy of the current instructions and the new Form TCR–1. It may be that because of the constant pressures of day-to-day problems, and in some instances the mergers of banks, some officials of financial institutions are unfamiliar with the Treasury Department's currency reporting program. Officials of all banks and other financial institutions are requested to give their wholehearted cooperation in furnishing information to enable the Internal Revenue Service to identify the few tax cheats, thereby helping to protect the economic and financial interests of the vast majority of our citizens.

I am sure that upon reviewing this matter all financial institutions will realize the importance of proper reporting and assisting the Treasury Department in this area as they have in so many other ways. The Treasury Department is grateful for the assistance rendered it by the financial institutions of the country.

Sincerely,

ROBERT B. ANDERSON,
Secretary of the Treasury.

TR-1
Treasury Department
(Revised 8-3-60)

REPORT OF CURRENCY TRANSACTIONS

See Reverse for Instructions

A. PERSON OR ORGANIZATION CONCERNED IN TRANSACTIONS REPORTED

Name

Address

Business, profession, or occupation

B. DESCRIPTION OF TRANSACTIONS

U.S. Currency Involved		Nature of Transactions (State whether deposit, withdrawal, exchange of currency, cashing or purchase of check, etc.)
Total Amount	Amount in denominations of $100 or higher	

Additional information

C. FINANCIAL INSTITUTION REPORTING

Name

Address
(Number) (Street) (City) (State)

INSTRUCTIONS

This report is required pursuant to Treasury Department regulations revised May 3, 1960 (31 Code of Federal Regulations 103).

Forms TCR-1 shall be prepared in original only for currency transactions involving United States currency as follows:

1. Transactions involving $2,000 or more of United States currency in denominations of $100 or higher;
2. Transactions involving $10,000 or more of United States currency in any denominations, and
3. Transactions involving any amount in any denominations,

which in the judgment of the financial institution exceed those commensurate with the customary conduct of the business, industry or profession of the person or organization concerned.

Reports shall be filed on or before the 15th day of the month following that within which the reported transactions occur, with the Federal Reserve Bank of the district in which the reporting financial institution is located. Copies of this report may be obtained from any Federal Reserve Bank.

U.S. GOVERNMENT PRINTING OFFICE: 1970